

# MISCELLANEOUS WATER AND POWER BILLS

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON WATER AND POWER  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED THIRTEENTH CONGRESS  
FIRST SESSION  
ON

|               |                     |
|---------------|---------------------|
| <b>S. 211</b> | <b>S. 693</b>       |
| <b>S. 284</b> | <b>S. 715</b>       |
| <b>S. 510</b> | <b>S.J. Res. 12</b> |
| <b>S. 659</b> | <b>H.R. 316</b>     |
| <b>S. 684</b> | <b>S. Amdt. 579</b> |

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APRIL 16, 2013



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## MISCELLANEOUS WATER AND POWER BILLS

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TUESDAY, APRIL 16, 2013

U.S. SENATE,  
SUBCOMMITTEE ON WATER AND POWER,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:30 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Brian Schatz presiding.

### OPENING STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII

Senator SCHATZ. Good afternoon. I'd like to welcome everyone here today.

Today's hearing involves several bills that are pending before the Subcommittee on Water and Power. The bills cover different aspects of our water and power jurisdiction including rural power and hydro power. A majority of them have gone through some committee process in the previous Congress.

I'd like to spend just a few minutes discussing Senate joint resolution 12 because it pertains to my home State of Hawaii and to the welfare of those in the native Hawaiian community, who have land leases under the Hawaiian Homes Land Program. This program was established by Congress and enacted into law in 1921 when Hawaii was still a territory in order to ensure native Hawaiian people would have land set aside where their communities could continue to thrive. In 1960 under the State of Hawaii Admission Act the United States required the State of Hawaii to administer certain portions of this Federal trust responsibility.

The State of Hawaii incorporated that delegated responsibility into its own constitution and body of law. The program is administered by the Department of Hawaiian Homelands, an agency of the State of Hawaii with certain oversight responsibilities retained by the United States and exercised by the Department of Interior and the Congress. The Congress retained the authority to review and consent to certain amendments made to this program by the Hawaii State Legislature.

Senator Hirono and I introduced this legislation to provide the required consent of Congress to 3 amendments enacted by the State of Hawaii to the Hawaiian Homes Commission Act of 1920. The Secretary of the Interior has determined that Congressional consent and approval is needed for the amendments to become effective. These amendments would give a homestead leasee the authority to transfer their interest in a lease to certain family mem-

bers and to designate certain family members to succeed to the lease hold interest at the time of a death. The amendments would also allow the Hawaiian Homes Commission to establish an interest rate on loans from Hawaiian home loan funds.

I plan to work with the chairman and others on this committee to get congressional consent for these amendments.

There are a number of other bills on the agenda today. I look forward to learning more about them.

Now I'll turn to our ranking member, Senator Lee, for his opening comments.

**STATEMENT OF HON. MIKE LEE, U.S. SENATOR FROM UTAH**

Senator LEE. Senator Schatz, it's a pleasure to be here today.

I thank you for chairing this hearing on a number of water and power measures, two of which are integral to my home State of Utah, S. 211, the Provo River Project Transfer Act and S. 510, the Scofield Land Transfer Act. I've co-sponsored both of these bills with my colleague Senator Hatch.

The Provo River Project Transfer Act will enable the full transfer of the Provo Reservoir Canal to the Provo River Water Users Association.

As contemplated by a previous bill that was passed in 2004, the Scofield Land Transfer Act will resolve long standing discrepancies with regard to private property near Scofield Reservoir in Carbon County, Utah.

The bills before us today have had hearings in the previous Congress and address many of the issues we'll be examining over the next couple years. These issues include mechanisms to provide safe and reliable water supplies for rural communities and opportunities to improve our power supplies. So while the underlying purpose of each bill before us today is different, they all attempt to identify tools to ensure that our power and our water and our power facilities are both safe and reliable.

I thank the Federal witnesses for being here today. I thank you, Senator Schatz, for conducting this hearing. I look forward to the testimony.

I do note at the outset, I'm also the ranking member on the Antitrust Subcommittee, so I may be having to bounce back and forth between these two. So with that understanding, I'll turn it back over to you.

Thank you.

Senator SCHATZ. Thank you, Ranking Member Lee.

Senator Johnson, opening remarks.

**STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA**

Senator JOHNSON. Thank you, Chairman Schatz and Ranking Member Lee. I appreciate this opportunity to speak in support of two bills on today's agenda: the Mni Wiconi Project Act Amendments, S. 684, and the authorized Rural Water Projects Completion Act, S. 715.

The Mni Wiconi Amendments bill addresses a shortfall in construction funding and facilitates key infrastructure improvements to ensure that the Mni Wiconi rural water project can be com-

pleted. This project has brought together 3 tribal rural water systems and one non-tribal rural water system to deliver quality water to areas that historically faced insufficient and, in too many cases, unsafe drinking water. Mni Wiconi also offers economic hope to 3 Indian reservations in my State that face some of the most challenging levels of unemployment and poverty in the Nation. Nearly 25 years after it was first authorized, the ball is on the one yard line with this project. I remain committed to seeing it through.

We also need to do more to address the growing backlog of Bureau of Reclamation rural water projects. I'm a co-sponsor and strongly support the Authorized Rural Water Projects Completion Act. The bill will provide substantial, dedicated funding to speed construction of congressionally authorized projects.

After historic investments in rural water through the Recovery Act, discretionary budget requests for projects like the Lewis and Clark Regional Water System have fallen to levels insufficient to make any meaningful progress. This legislation offers a new approach to get these projects back on track and bring economic development opportunities to the communities they serve.

I look forward to working with my colleagues on this committee to move this legislation forward, and I thank Senator Baucus for all his efforts.

I would also note that the Lewis and Clark Regional Water System will be submitting written remarks in support of this bill that I ask be included in the record.

Thank you, Mr. Chairman.

Senator SCHATZ. Thank you, Senator Johnson.

I'm informed that Senator Baucus is on his way and should be with us very shortly. So we'll wait for him before we proceed to the witnesses.

[RECESS.]

Senator SCHATZ. I think what we'll do is proceed to the FERC testimony so that you can provide your testimony on the first bill.

So could we have John Katz from the Federal Energy Regulatory Commission provide his testimony? Thank you.

**STATEMENT OF JOHN KATZ, DEPUTY ASSOCIATE GENERAL COUNSEL, FEDERAL ENERGY REGULATORY COMMISSION**

Mr. KATZ. Good afternoon.

Thank you very much for asking the Commission to appear before the subcommittee to testify on Senate Amendment 579 and H.R. 316 which are both named the Collinsville Renewable Energy Promotion Act. These proposed bills relate to two projects that were licensed by the Federal Energy Regulatory Commission some time ago to a private developer. The Federal Power Act requires the Commission to require a developer to start construction within 2 years of receipt of a license and allows the Commission to extend that once for another 2 years.

The Commission did that with respect to this developer. At the end of that time, again, as required by the Federal Power Act, the Commission revoked the license. So between that period and now, which is a period of about 6 or 7 years, I think, there's been no interest in developing the site. The proposed bills would authorize

the Commission to reinstate the licenses and to transfer them to the Town of Canton, Connecticut after performing an appropriate environmental review and receiving appropriate public comment.

While generally the comments that I give are my own and don't reflect the opinions of the chairman or of any commissioner. The chairman has authorized me to say that he does not oppose this bill because of the lack of competition for the site so that the bill in no way adversely affects competition and because of the provisions requiring environmental review. So there's no question that the environmental review done under the previous licensing will be stale.

With that I'll yield back the balance of my time. I'd be happy to answer any questions.

[The prepared statement of Mr. Katz follows:]

PREPARED STATEMENT OF JOHN KATZ, DEPUTY ASSOCIATE GENERAL COUNSEL,  
FEDERAL ENERGY REGULATORY COMMISSION

ON S. AMDT. 579 AND H.R. 316

Chairman Schatz, Ranking Member Lee, and Members of the Subcommittee:

My name is John Katz, Deputy Associate General Counsel for Energy Projects, Federal Energy Regulatory Commission. I appreciate the opportunity to appear before you to discuss S. Amdt. 579 and H.R. 316. As a member of the Commission's staff, the views I express in this testimony are my own, and not those of the Chairman or of any individual Commissioner, other than as specifically noted below.

I. BACKGROUND

On February 23, 2001, the Commission issued original licenses to Summit Hydro-power for the 373 kilowatt (kW) Upper and the 920 kW Lower Collinsville Hydro Projects, to be located at the Upper and Lower Collinsville Dams on the Farmington River, in Hartford County, Connecticut.

Section 13 of the Federal Power Act requires that licensees commence project construction by the deadline established in the license, which may be no longer than two years from the date of license issuance. The Commission may extend the deadline once, for no longer than two additional years. If construction does not timely commence, section 13 requires the Commission to terminate the license by written order.

Consistent with section 13, Article 301 of the licenses for the Collinsville Upper and Lower Hydroelectric Projects required the licensee to commence project construction within two years. On November 26, 2002, at the licensee's request, the Commission issued the maximum allowable two-year extension, moving the commencement of construction deadline to February 23, 2005.

Summit did not commence project construction by the deadline. Accordingly, by letter dated November 2, 2007, the Commission gave Summit notice of probable termination of the licenses. Summit did not reply to the notice. By order issued December 4, 2007, the Commission terminated the project licensees. The licensee did not seek rehearing of the termination order, which therefore became final on January 3, 2008.

II. S. AMDT. 579 AND H.R. 316

S. Amdt. 579 and H.R. 316 would authorize the Commission to reinstate either or both of the licenses for the Upper and Lower Collinsville Projects, to extend for two years the commencement of construction deadline for the projects, and to transfer the license or licenses to the Town. As specified in S. Amdt. 579, the Town would be subject to the terms and conditions of the prior license(s) and both bills provide that the Commission will add to the license(s) any additional terms and conditions the Commission deems to be necessary.

In addition, both bills provide that the Commission will supplement the environmental analysis prepared in connection with the issuance of the prior licenses, to examine all new circumstances or information relevant to environmental concerns relating to the reinstated licenses.

Chairman Wellinghoff and the last several Commission Chairmen have taken the position of not opposing legislation that would extend the commencement of con-



struction deadline no further than 10 years from the date that the license in question was issued. Where proposed extensions would run beyond that time, there has been a sense that the public interest is better served by releasing the site for other public uses, that competition in the development of hydropower projects should be encouraged, and that environmental information may over time become stale.

In this instance, the proposed extensions would run at least three years beyond 10 years from when the licenses for the Upper and Lower Collinsville Projects were issued. However, to Commission staff's knowledge, in the more than five years since the project licenses were terminated, no entity has sought to develop the projects or proposed other uses for the project sites, thus ameliorating concerns about competition or release of the sites. Moreover, because the bills specifically provide for the preparation of an updated environmental analysis, staleness of the environmental record will not be an issue. In consequence, I am authorized to state that Chairman Wellinghoff does not oppose S. Amdt. 579 or H.R. 316.

I would be pleased to answer any questions you may have.

Senator SCHATZ. Mr. Katz, your testimony indicates that FERC doesn't oppose this legislation even though it's inconsistent with the previously held position that FERC does not support extensions of time to develop hydropower projects. Has there been a shift in the FERC position to allow for more flexibility or is this a one off, in your opinion?

Mr. KATZ. No, I don't think so. It's closer to a one off. The past few chairmen have indeed held the position that after 10 years from when the date a license had been issued is a long enough period for a developer to develop a project. But in this instance the extension bill is not benefiting the same developer. It's benefiting a municipality. As I said, two factors, I think, were primary in our thinking.

One was that there's been no one trying to take the site, so that Congress' action would not in any way adversely affect competition.

The second issue that comes up over a period of time is that the environmental record may become stale. But both of these bills provide that the Commission shall update the environmental records. So the Commission's concerns, as a general matter, have been assuaged in this case.

Senator SCHATZ. Thank you.

Thank you, Mr. Katz.

Mr. KATZ. Thank you very much.

Senator SCHATZ. Senator Heinrich, would you like to make an opening statement?

Senator HEINRICH. No, thank you.

Senator SCHATZ. I think we'll proceed to the second witness, Robert Quint, the Senior Advisor at the Bureau of Reclamation.

Mr. Quint.

#### **STATEMENT OF ROBERT QUINT, SENIOR ADVISOR, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR**

Mr. QUINT. Thank you, Chairman Schatz and members of the subcommittee. I'm Bob Quint, Senior Advisor at the Bureau of Reclamation. Thank you for the opportunity to testify on 7 of the bills before the subcommittee today.

I also ask for your consent to submit a Departmental statement for the record on Senate Joint Resolution 12 which consents to and approves certain technical amendments proposed by the State of Hawaii to the Hawaiian Homes Commission Act of 1920.

Due to the number of Reclamation bills on the agenda I will keep my verbal remarks as short as possible and my full written statements have been submitted for the record.

Let me start with S. 211, Provo River Project Transfer Act. S. 211 provides a technical correction to the earlier enacted Provo River Project Transfer Act, now Public Law 108-382. Our agency supported passage of that earlier titled transfer legislation in 2004.

My written statement provides more detail in the events that have transpired since its enactment. But in summary S. 211 addresses the fact that the Provo Canal was converted into a pipeline after the title transfer was enacted and the strict language of the original title transfer did not allow for that. Reclamation and our partners should have foreseen that possibility before the work proceeded, but for reasons described in my written statement, we did not.

We are pleased to support S. 211 to settle the issue and fully complete the transfer originally envisioned in 2004.

Next, S. 284, Fort Sumner Project Transfer Conveyance Act. S. 284 provides for the title transfer of the Fort Sumner Project in New Mexico as well as a long term provision of water for fish flows on the Pecos River.

In June of last year the United States and the Fort Sumner Irrigation District executed a MOA culminating a collaborative process to bring about conveyance of title to the Fort Sumner Project in the remaining steps required of the Federal and non Federal parties. The MOA will facilitate an arrangement between FSID and the U.S. Fish and Wildlife Service for actions under Section 10 of the Endangered Species Act to be finalized prior to the transfer which will protect habitat of the federally listed Pecos River bluntnose shiner.

My written statement provides more detail. But in summary, the Department is also pleased to support S. 284.

Next, S. 510, Scofield Land Transfer Act. S. 510 conveys interest in certain lands associated with the Reclamation Scofield project in Carbon County, Utah.

In the 1950s individuals began locating structures on flood surcharge lands at Scofield Reservoir without Reclamation concurrence. These encroachments pose a dam safety issue because a flood event may float debris or structures into the spillway and threaten the dam. S. 510 proposes to resolve these encroachments on Federal lands by authorizing Reclamation to transfer a fee interest or life estate to those who claim ownership of the United States' lands within the Scofield Reservoir Basin in exchange for fair market value. Structures would also be required to be anchored to foundations to prevent displacement during flood events and therefore reduce the potential for compromising the dam causing harm downstream.

My written statement addresses the provisions more specifically and proposes some technical clarifications of the bill.

In summary, the Department does not oppose S. 510 with the improvements recommended in my written statement.

Next is S. 659, the Emergency Drought Relief Reauthorization. S. 659 would reauthorize the Reclamation's State's Emergency Drought Relief Act.

While my written statement details how planning and conservation are the most effective means of addressing drought we, none the less, recognize that the authorization of Title I of the Drought Act as a useful tool in responding to drought emergencies. S. 659 allows Reclamation the flexibility to continue delivering water to meet authorized project purposes, meet environmental requirements, respect State water rights, work with all stakeholders and provide assistance.

We are pleased to support S. 659.

Next is S. 684, the Mni Wiconi Project Act Amendments. S. 684 would amend the original Mni Wiconi Project Authorization with additional project features and obligations for new Federal appropriations.

The Mni Wiconi Project will be substantially complete with the allocation of appropriations provided in the current Fiscal Year 2013 budget. We recognize that this legislation has been significantly revised since Reclamation last testified it in 2012. However as stated in testimony on the prior legislation Reclamation has a significant backlog of authorized but not constructed rural water projects. Therefore we continue to have serious concerns about adding to the scope of an existing project that is nearly complete.

For reasons described in my written statement mainly driven by the serious budget situation confronting Reclamation and all Federal agencies, the Department cannot support S. 684.

Next is S. 693, Hermiston Title XVI. S. 693 would authorize Reclamation to co-fund a water recycling and reuse plant in the city of Hermiston, Oregon.

Working together the city and Reclamation have completed specific actions that are necessary for the proposed project. This includes environmental compliance, issuance of the license to the city, granting authorization to construct and operate a facility on Reclamation Fee Title land and issuance of a permit allowing this water to be discharged into Reclamation's West Main Canal.

However, for reasons described in my written statement standing policy is we do not support new authorizations while that backlog remains as high as it is.

Next is S. 715, Rural Water Project Completion Act. The Department testified on a prior version of S. 715 in July 2012. Our position remains the same on S. 715. We support the goals of the bill and recognize the benefits of the potential dedicated rural water construction fund in the United States Treasury which would enable earlier completion of projects.

Section 3B3 of S. 715 provides that the bill's cost would be offset so as not to increase the deficit. The Department supports such language.

Finally, Senate Joint Resolution 12 amends the Hawaiian Homes Commission Act to allow the interest rate on loans from the Hawaiian Home Loan Fund and the Hawaiian Home Loan Fund to be set by the Hawaiian Homes Commission through an administrative rule rather than by law. Senate Joint Resolution 12 also changes the qualifications of homestead leasees by authorizing a Hawaiian Homes Commission Act Homestead leasee to transfer or designate to a successor to their leasehold interest to a brother or sister who is at least one quarter native Hawaiian.

The Department supports the United States consenting to and approving of Act 107 and remains neutral on the consenting to and approval of Acts 12 and 16.

I'd be happy to follow up with the Department regarding any questions you may have.

That concludes my verbal remarks. I'd be pleased to answer any questions you may have.

[The prepared statements of Mr. Quint follow:]

PREPARED STATEMENTS OF ROBERT QUINT, SENIOR ADVISOR, BUREAU OF  
RECLAMATION, DEPARTMENT OF THE INTERIOR

ON S. 211

Chairman Schatz and Members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to present the views of the Department of the Interior (Department) regarding S. 211, an amendment to the Provo River Project Transfer Act (Act) authorizing the Secretary of the Interior (Secretary) to convey the recently-enclosed Provo Reservoir Canal to the Provo River Water Users Association (Association). The Department supports S. 211.

A principal feature of the Provo River Project is the Provo Reservoir Canal (canal). It extends 22 miles from the mouth of Provo Canyon to Salt Lake County. Once it meandered through pastures and fields. By the late 1990s, suburban development had surrounded it. During this time, the Association concluded that owning the canal and associated project features would facilitate its ability to obtain financing for its eventual enclosure of the canal. Enclosing the canal into pipe offered significant potential new benefits in terms of water conservation, water quality, in stream flows, public safety and upstream recreation.

In 2004, Congress agreed that transfer of the Provo River Project was in the public interest. The Provo River Project Transfer Act (Public Law 108-382) was enacted, authorizing the transfer to the Association of the Provo Reservoir Canal and the site of the Association's Office. It further authorized the transfer of the Salt Lake Aqueduct to the Metropolitan Water District of Salt Lake and Sandy. The Department supports transferring ownership of certain Reclamation project facilities to non-Federal entities in cases where transfers create benefits for those who take title as well as for other stakeholders and the public. For this reason, the Department supported passage of the Act in 2004.

In the years since enactment of the Act, Reclamation has conveyed the Salt Lake Aqueduct to the Metropolitan Water District of Salt Lake and Sandy. One of the requirements of the Act was that all of the water users—including the Association, the Central Utah Water Conservancy District, the Metropolitan District of Salt Lake and Sandy and the Jordan Valley Water Conservancy District needed to develop a comprehensive agreement to govern the operations, ownership financing and improvement of the PRC (Section 3.a.1B of the Act). Consequently, following its enactment, the parties began meeting regularly to discuss and negotiate the Master Agreement. From late 2004 through mid-2009, all of the parties acted on the belief that, after the parties reached agreement as required in the Act, Reclamation would transfer title and, after transfer, the Association would begin the piping of the PRC. However, in May of 2009, the Association determined that the approach being considered for title transfer, funding, and enclosure placed the Association's tax-exempt status in jeopardy and threatened the entire project.

In response, an alternative strategy for the canal portion of the transfer was developed by the parties, whereby the Association, the partners and Reclamation proceeded with piping the canal under Reclamation's operation, maintenance, and replacement authority in 2009. Today, crews are constructing a recreation trail on the surface of the ground over the piped Provo Reservoir Canal. Below the surface, a 10.5-foot-diameter pipe continues to convey Provo River Project water.

Unfortunately, the parties, including Reclamation, moved forward with the title-transfer-after-piping option without realizing that this sequence was out of compliance with the original statutory authority to transfer the Provo Reservoir Canal to the Association "as in existence on the date of enactment[.]". In retrospect, we all should have more carefully considered the potential effects of this change in the title transfer/construction sequence on title transfer as provided for in the Act. That brings us to the need for the technical amendments provided by S. 211. This technical amendment alters the definition of the Provo Reservoir Canal to authorize the transfer of the pipeline as well as to eliminate any confusion about the facilities to

be transferred. The amendment authorizes transfer of the newly constructed pipeline by removing the term “canal” in the definition and replacing it with “water conveyance facility historically known as the Provo Reservoir Canal”, and by eliminating the phrase “as in existence on the date of enactment of this Act.” The bill also directs the transfer of “all associated bridges, fixtures, structures, facilities, lands, interests in land, and rights-of-way held”, which Reclamation also supports since appurtenant facilities are currently used by the Association.

The majority of the \$150 million cost of piping the canal was born by the Association, the Central Utah Water Conservancy District, the Jordan Valley Water Conservancy District, and the Provo Reservoir Water Users Company. Federal funding applied to the project was \$39 million provided by the Central Utah Project Completion Act Office. This amount, provided under the water conservation provisions of the Central Utah Project Completion Act, ensured that 8,000 acre-feet of conserved water would be made available to the Secretary to provide in-stream flows on the lower Provo River. These flows benefit fish and wildlife including the endangered June sucker, a species native only to Utah Lake and its tributary streams. Reclamation provided no funding to the piping project.

As a condition of title transfer, the 2004 Act (PL 108-382) requires the Association to remit to the United States its repayment obligation associated with the canal—the amount it continues to owe Reclamation for reimbursement of the original costs of construction. This obligation does not change under the technical amendment proposed by S. 211.

Reclamation sees the issue being addressed by S. 211 as purely technical. Concurrent to consideration of S. 211, Reclamation, the Association and the other partners continue to move ahead to complete all the other steps necessary to transfer title and believe that with passage of this bill, we will be able to move forward expeditiously to finalize this title transfer. We continue to support the title transfer and the excellent work that has gone on with the enclosure of the canal.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.

ON S. 284

Chairman Schatz and members of the Subcommittee, I am Robert Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) regarding S. 284, which would authorize the Secretary of the Interior to convey title to all of the works of the Fort Sumner Project (including the diversion dam, easements, ditches, laterals, canals, drains, and other rights) to the Fort Sumner Irrigation District (FSID). The Department supports S. 284.

In 2011, S. 1225 was introduced in the 112th Congress, which would have authorized the United States to convey title to all of the works of the Fort Sumner Project to the FSID. At the time of the hearing on June 23, 2011 before this Committee on that bill, it was the view of the Administration that a number of issues had yet to be resolved between the United States and FSID, including a net financial loss to the Treasury of approximately \$250,000, the need for an open and transparent process for the public to provide input prior to conveyance of title, and the need for Reclamation and FSID to work through a collaborative process to ensure that operational, fiscal, environmental, and other issues are identified and addressed. However, since that time, Reclamation and FSID have worked together and a number of those issues are addressed in S. 284. Specifically, in 2012, the “Memorandum of Agreement between the United States and the Fort Sumner Irrigation District Concerning Principles and Elements of Proposed Transfer of Title to Fort Sumner Irrigation District” (MOA) was executed, which addresses the issues we had with the previous legislation as described below.

#### BACKGROUND

There are two Reclamation projects on the Pecos River located in southeastern New Mexico: the Carlsbad and Fort Sumner Projects. The Fort Sumner Project was developed by private interests at the turn of the last century. In the 1950s, this project was reconstructed and rehabilitated by Reclamation. In 1948, in order to make this happen, Reclamation and the FSID executed a contract to provide for the repayment of construction costs to rehabilitate the project. As part of the process, Reclamation law required that Reclamation take title to the Project. Currently, the FSID has an annual repayment obligation of about \$54,500 with an outstanding balance of approximately \$597,697.00.

The FSID holds a senior water right for not more than 100 cubic feet per second from the natural flow of the Pecos River. Reclamation must bypass the FSID’s water

through Sumner Reservoir prior to storing water for the Carlsbad Project. Over the past ten years, Reclamation has consulted with the U.S. Fish and Wildlife Service (Service) to ensure that Federal actions are not jeopardizing the existence of the Pecos bluntnose shiner or adversely modifying its critical habitat located below FSID's diversion dam. In these consultations, Reclamation has committed to the Service to maintain the shiner population level by minimizing river drying. A significant cause of drying on the Pecos is due to the FSID diverting its senior water right. The only way Reclamation has been able to keep the Pecos River flowing is by purchasing water from willing sellers and by paying the FSID not to divert water through a forbearance agreement.

In August 2009, Reclamation and FSID entered into a mutually beneficial agreement whereby FSID would forbear the diversion of up to 2,500 acre-feet of water annually for ten years when they would otherwise be in priority. Instead, this water goes into Sumner Lake reservoir where it is stored and delivered for Reclamation to prevent intermittency of flows on the Pecos River in compliance with the 2006 biological opinion. Reclamation pays FSID \$60,000 annually plus \$20 per acre-foot for the water. In addition to the forbearance of this water, FSID agreed to pursue ESA Section 10 consultation with the Service and Reclamation agreed to assist them in this process. Also in this agreement, FSID indicated its desire to take title to the facilities and Reclamation agreed to work with them on that process. The forbearance agreement further provides that the annual payments of \$60,000 from Reclamation to FSID will cease upon both the passage of title transfer legislation and the conveyance of title. To date, this has been a mutually beneficial agreement. The forbearance water has afforded Reclamation with an additional tool to meet the biological opinion to ensure that the Pecos River does not run dry in a cost effective manner.

As drafted, S. 284 protects the financial interests of the taxpayers of the United States. Under the terms of the Forbearance Agreement that is currently in place, Reclamation pays FSID \$60,000 annually plus \$20 per acre-foot for water. Under the terms of S. 284, after title transfer, the \$60,000 annual payments from the United States to FSID would cease. At the same time, FSID's repayment obligation of \$597,697 to the United States would also cease. These two revenue streams—one to FSID and one to the United States would offset. Further, the United States would continue to receive, in perpetuity rather than just for the ten years, the below-market-cost of \$20 per acre-foot for up to 2,500 acre feet of water annually that they need in order to meet the 2006 biological opinion—thereby saving the taxpayers in costs associated with this important water acquisition effort.

#### MEMORANDUM OF AGREEMENT

On June 22, 2012, the United States and FSID executed MOA, numbered 11-WC-40-406. This agreement was the culmination of a collaborative process between Reclamation and the FSID which articulated the principles elements for any legislation to authorize conveyance of title to the works of the Fort Sumner Project, as well as the steps required to complete the title transfer process, the responsible parties for each activity and spelled out the prerequisites to the actual conveyance of title to FSID.

The MOA takes an important step in resolving our concern regarding compliance with Federal and state laws—more specifically—with the terms of agreement to be developed between FSID and the U.S. Fish and Wildlife Service required under Section 10 of the Endangered Species Act. While it would be our preference to complete all of the activities required under the National Environmental Policy Act, the National Historic Preservation Act and the Endangered Species Act prior to acting upon legislation to transfer title, as a compromise, S. 284 requires that all the activities associated with these laws, including whatever mitigation may be necessary be completed prior to the transfer of title to these facilities. As part of that, before the conveyance of title, Reclamation must concur with the ESA Section 10 agreement thus ensuring that the United States' interests are not compromised.

Because S. 284 requires National Environmental Policy Act compliance and completion of ESA Section 7 and Section 10 consultations as prerequisites to conveyance of title, Reclamation and FSID will have the opportunity to complete a public process to determine whether other interested citizens of New Mexico have concerns and any issues that arise during that public process can be collaboratively be addressed in the title transfer agreement that must be prepared to articulate the terms and conditions of the title transfer as defined in Section 2(7) of the Act.

S. 284 also authorizes Reclamation to cost-share with FSID for both environmental compliance as well as the cost of conveyance of title.

Lastly, Reclamation believes that S. 284 would assure the continuation of the partnership Reclamation has developed with FSID in meeting the 2006 Biological Opinion requirements. With the challenges of persistent drought in the Pecos River basin and the need for Reclamation to consult, in partnership with FSID and the Carlsbad Irrigation District, with the Service in obtaining a new biological opinion by 2016, this title transfer legislation will enable us to meet this critical objective.

As a result of the efforts, hard work and compromises by both Reclamation and FSID, we believe that we have reached an agreement that protects the interests of FSID, the citizens of the States of New Mexico and the interests of the United States.

That concludes my written statement. I am pleased to answer questions at the appropriate time.

ON S. 510

Chairman Schatz and members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the Department of the Interior's views on S. 510, legislation to authorize the Secretary of the Interior to convey certain interests in Federal lands acquired for the Scofield Project in Carbon County, Utah. The intent of the legislation is to resolve certain issues associated with decades-long encroachment on Federal lands in the Scofield Reservoir basin while maintaining the safety of the public downstream. If the revisions described below are made, the Department would not oppose an amended S. 510.

The Scofield Project is located on the Price River about 85 miles southeast of Salt Lake City, Utah. It provides irrigation and municipal and industrial water to Carbon County, Utah. The reservoir is a popular fishing destination. Under contract with Reclamation, the State of Utah operates a state park at the site.

At Scofield Reservoir, the vertical distance between the normal water surface elevation of the reservoir and the flood surcharge elevation (the level to which the water level may rise in a flood event) is approximately 19 feet. Given the sloping sides of the reservoir basin, this flood surcharge capacity translates into a wide band of land around the perimeter of the reservoir above the normal water surface elevation and below the flood surcharge elevation. The United States owns in fee most of the lands within this band. In a flood event, water would inundate these lands. It is Reclamation's practice to keep these lands free of structures and chattel that, in a flood event, might be floated into the spillway.

In the 1950s, an individual purported to subdivide and sell some of these flood surcharge lands—in spite of United States' ownership. The purported "owners" (referred to in the Scofield Land Transfer Act as "claimants") began locating mobile homes and building cabins on these lands. There are over sixty encroaching cabins and trailers today. These encroachments pose a dam safety issue because a flood event may float debris or structures into the spillway, creating a logjam that would reduce the spillway's capacity and threaten the dam. The sudden collapse of such a logjam would create a wall of water, scouring the canyon below the dam and flooding the downstream communities of Helper, Price, and Wellington. Reclamation recently completed an assessment on the risk imposed by this scenario entitled, Scofield Dam—Report of Findings Risk Analysis Considerations for Reservoir Surcharge (January 2013). This assessment revealed that should a logjam of structures and chattel in the spillway suddenly give way, it would release a flood downstream of up to 8,000 cubic feet per second, which is 40 to 50 times the normal expected flow in the Price River below Scofield Dam.

In 2000, Reclamation initiated a quiet title action on lands within the band on the east side of Scofield Reservoir and was joined in that action by 15 claimants. A 2009 decision by the Tenth Circuit Court of Appeals affirmed ownership by the United States. Reclamation has removed the encroachments on the lands that were the subject of the quiet title action. Because of similar underlying facts, quiet title actions associated with the remaining encroachments would likely affirm United States' ownership.

The bill proposes to resolve these encroachments on Federal lands by authorizing the Secretary of the Interior to transfer a fee interest or life estate to those who claim ownership of United States' lands within the Scofield Reservoir basin in exchange for fair market value. Claimants have a period of five years during which they may seek a fee interest or life estate. If a claimant does not elect to acquire a fee interest or life estate, Reclamation will remove the encroachment under existing law and policy, including the removal of encroaching structures.

Although the bill addresses in part key objectives for Reclamation, the ideal scenario for Reclamation is for no structures or dwellings to fall within a facility's flood

surcharge elevation. Having said that, the bill does address concerns such as improved protection of public safety and resolving certain issues of encroachment on United States' lands. In addition, the bill imposes conditions on transferred lands. First, it limits the number and types of structures to those in place on the date of enactment. Second, it requires that structures be anchored to foundations to prevent displacement during a flood event and thereby reduce the potential for clogging the spillway, compromising the dam, and causing harm downstream. Third, it requires Reclamation to retain the ability to store flood flows on the transferred lands without liability to the United States.

While Reclamation supports, in general, some specific provisions in the bill, the legislation perpetuates occupancy within the flood surcharge elevation, which poses public and dam safety concerns. In addition, the bill's language raises a number of technical concerns:

**Cost of Implementation**—The proposed legislation does not provide any monies to fund Reclamation's work in surveying, appraising, and transferring fee interest or life estates to claimants. The legislation furthermore does not provide any monies to conduct environmental compliance, provide notice to claimants of existing trespasses or encroachments on Federal lands, or enforce deed restrictions. These costs should not be absorbed by the Federal Government.

**Cost of Administration**—After the legislation is fully implemented, Reclamation will likely face a patchwork of ownership (private fee interest, private life estates, Reclamation fee interest, and Reclamation flood easements) at the reservoir in the band between the normal water surface elevation and the flood surcharge elevation. On the transferred lands, Reclamation will be required to monitor construction and the retrofitting of structures to ensure that they are properly secured. In addition, Reclamation will be required to preserve public access to Reclamation fee lands that are not encumbered by life estates. The administration costs and enforcement obligations pursuant to any conveyance restrictions are best left to the local government, subject to oversight by Reclamation.

**Scofield Reservoir Fund**—The proposed legislation calls for revenues from the sale of fee interests and the sale of life estates to be deposited into a "Scofield Reservoir Fund." The fund would be used to finance "enhanced recreation opportunities at Scofield Reservoir." The Department of the Interior has serious concerns about the establishment and use of the Scofield Reservoir Fund because of the costs associated with administering a small and narrowly focused fund. Also, the fund could better be used to defray administration and enforcement costs associated with these lands rather than being directed toward the beneficiaries of the conveyance.

**Precedent**—On one level, the proposed legislation amounts to rewarding encroachment with an opportunity to purchase or acquire private exclusive use of Federal lands. The Department of the Interior is concerned about the bill setting a precedent or expectation that there can be a path from encroachment to ownership; however, the Department also finds merit in amicably resolving encroachment issues on the Scofield Reservoir without embarking on protracted litigation.

**Report to Congress**—Reclamation believes the bill's objectives can be accomplished consistent with Congressional intent and with support from the local community. Because of the proliferation of required reports to Congress, and the demand on finite budget resources, the Department in general does not support new and narrow reporting requirements.

In addition to those issues raised above, Reclamation has a number of technical concerns:

**Land Disputes**—Among claimants there are disputes about the boundaries of their claims. The resolution of these claims would likely erode the five years that the claimants have to decide whether to submit notice of a desire to acquire a fee interest or life estate. The legislation should direct claimants to accept the result of the Reclamation survey required under Section (3)(a)(1).

**Hold Harmless Clause**—The life estate option requires the claimant to hold the United States harmless for damages due to "design, construction, operation and replacement." The list of causes from which damages may arise should also include "maintenance." In addition, there is no requirement for claimants seeking fee interest in claimed land to hold the United States harmless. Reclamation recommends that a hold harmless requirement be added to the fee interest option.



**Payments in Lieu of Taxes (PILT)**—The proposed legislation should explicitly state that PILT payments will be discontinued for lands transferred in fee to claimants.

**Mineral Rights**—The proposed legislation should state that there will be no conveyance of subsurface or mineral rights.

**Water Rights and Sewer System** A number of the claimants have developed wells that are also part of their encroachment. To the extent these wells are supported by valid State of Utah water rights, the legislation should address the fate of these wells under conveyance in fee or life estate. The sewer system serving encroachments is included in a Reclamation license agreement for the State Park. The license agreement is with the Scofield Special Service District for which Carbon County has oversight responsibility.

**Sunset**—The proposed legislation requires claimants to submit notification to the Secretary of their interest in a fee interest or life estate in the claimed portion of the Federal land within five years of the date of enactment of the proposed legislation, in order to stay enforcement proceedings on the Federal land. This could allow claimants to submit notice of their intent to receive a fee interest or life estate, without requiring the claimants to take any affirmative steps to effectuate the transfer. The proposed legislation should contain a sunset provision whereby notice and transfer must occur within a reasonable timetable.

In closing, Reclamation recognizes that, in spite of its serious concerns, the proposed legislation does offer an acceptable five-year solution to a problem Reclamation has wrestled with for many years. In light of this, the Department of the Interior will not oppose S. 510 if appropriate clarifying language and revisions are added.

That concludes my statement. I am pleased to answer questions at the appropriate time.

ON S. 659

Chairman Schatz and Members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior on S. 659 which reauthorizes Title I of the Reclamation States Emergency Drought Relief Act of 1991 until the year 2018, and increases the amount of authorized federal appropriations from the current ceiling of \$90 million up to \$110 million. The Department supports extending the authorization of this program through 2018; however, as explained below, we do not believe an increase to the authorization of appropriations is necessary at this time. An April 3rd update to the U.S. Drought Monitor shows that 83% of the Western United States, where Reclamation operates, is abnormally dry, with 63% being in moderate to exceptional drought status.

Title I of the Reclamation States Emergency Drought Relief Act of 1991 provides Reclamation the authority for construction, management, and conservation measures to alleviate the adverse impacts of drought, including mitigation of fish and wildlife impacts. This authority is most often implemented through drilling new private wells. Wells are the only permanent construction authorized under the Act. All other Title I work must be of a temporary nature. No new Reclamation projects are authorized under Title I; Reclamation does not own, operate, or maintain projects funded under it. S. 659 would extend the expiration date as well as increase the authorization for appropriations from \$90 million to \$110 million to allow for greater capacity in Reclamation's assistance to States, tribes, and local governments in addressing the impacts of drought.

Title I also provides Reclamation with the flexibility to meet contractual water deliveries by allowing acquisition of water to meet requirements under the Endangered Species Act, benefiting contractors at a time when they are financially challenged. We believe that our existing WaterSMART Program provides some lessons applicable to the communities where Drought Act authorities are used.

Additionally, Title I authorizes Reclamation to participate in water banks established under state law; facilitate water acquisitions between willing buyers and willing sellers; acquire conserved water for use under temporary contracts; make facilities available for storage and conveyance of project and nonproject water; make project and nonproject water available for nonproject uses; and, acquire water for fish and wildlife purposes on a nonreimbursable basis.

Reclamation's primary approach to drought is to continue working with our stakeholders on a proactive basis to assess the implications of water shortages, develop flexible operational plans that account for expected periods of drought, and support projects that conserve water and improve the efficiency of water delivery infrastructure. Federal Drought relief is a "last resort" to be employed only in the most ex-

tre of cases. Given the extreme weather conditions currently facing the nation, we will continue to consider ideas to make drought relief even more effective through improved interagency cooperation and other changes.

Title II of the Reclamation States Emergency Drought Relief Act of 1991 provides Reclamation with permanent authority to assist States, Tribes, and local governments with planning and technical assistance related to drought planning, preparation, and adaptation strategies. This authority allows Reclamation to assist non-Federal entities to prepare for drought so that they are less vulnerable when drought inevitably happens. This authority for drought-related Federal coordination and technical assistance does not automatically expire and will remain in effect without the authorities that S. 659 would extend.

Given that there remains a capacity for over \$15 million in authorized appropriations for this program, the Department does not believe an increase in the authorized appropriations ceiling is necessary at this time. If the authorized appropriations ceiling should become a more urgent constraint, we will evaluate the need for an increase to the appropriations ceiling at that time.

This concludes my written statement. I am pleased to answer questions at the appropriate time.

ON S. 684

Chairman Schatz and members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 684, the Mni Wiconi Project Act Amendments of 2013. The Department recognizes that meaningful changes to this bill have been made since prior related legislation was heard during the 112th Congress. However, if enacted, this updated version of the bill would still expand the scope and authorization ceiling of the Mni Wiconi Rural Water Supply Project, and have significant impacts on the budgets of both Reclamation and the Bureau of Indian Affairs. For the reasons described below, the Department cannot support S. 684.

The Mni Wiconi Rural Water Supply Project is a municipal, rural and industrial project that serves both tribal and non-tribal populations of the Pine Ridge, Rosebud, and Lower Brule Indian Reservations and the West River Lyman-Jones Rural Water System in seven counties of southwestern South Dakota. Responsibilities of the Secretary under the Mni Wiconi Rural Project Act (Public Law 100-516) include the operation and maintenance of existing water systems, including the core treatment plant and pipelines, and appurtenant facilities on the Pine Ridge, Rosebud and Lower Brule Indian Reservations. With the funding requested in the President's FY 2013 budget, the majority of the population of the project will be served. The Lower Brule and West River Lyman-Jones portions of the project will be completed. Generally those not connected to the project (approximately 2.5% of the population on Rosebud and Pine Ridge Reservation) are served by community water systems or individual wells. Reclamation would be happy to facilitate or coordinate action with other federal agencies to address the needs identified by the bill's sponsor. Reclamation has a backlog of authorized but not constructed projects. Therefore, we have concerns about adding to the scope of an existing project that is nearly complete.

Section 2 of S. 684 directs the Secretary of the Interior to develop a plan for completion of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, and the Lower Brule Sioux Rural Water System. Planning the completion of the systems is dependent on future appropriations as well as Reclamation's need for flexibility in decision-making relative to all authorized rural water projects. Reclamation must constantly assess and prioritize these kinds of projects to maximize the agency's ability to meet its programmatic goals, to maximize water deliveries to rural communities as efficiently as possible, and to reflect the diverse needs and circumstances facing each individual project. The Department would like to work with project sponsors of the bill to discuss plans for completion, and clarifying the roles, responsibilities, and authorities of Federal agencies involved in the project. An interagency agreement, as proposed by Reclamation during the August 8, 2012 Joint Consultation Meeting with Federal Agencies, has the potential to achieve many of these objectives. Further, Reclamation is continuing to evaluate the facility improvements needed to transfer and incorporate existing community water systems.

Section 2 also directs the Director of the Bureau of Indian Affairs, through the use of existing programs and annual appropriations, to assist the Secretary in completing the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water System, and the Lower Brule Sioux Rural Water System by constructing, re-

pairing, and upgrading plumbing fixtures, skirting, and other necessary features, such as septic tanks and drainfields, to ensure that houses within the service areas are able to meet the standards for connecting to those systems. The Bureau of Indian Affairs has no existing programs or annual appropriations for the construction, repair, or upgrading of plumbing fixtures or septic systems on private residence. Such function has usually been the responsibility of Health and Human Service or Indian Health Service.

Section 3(a) of S. 684 would increase the authorized Mni Wiconi cost ceiling by an additional \$14,308,000, based on October 1, 2011, price levels. Reclamation has worked closely with the project sponsors to ensure completed features will be functional and provide intended benefits within the currently authorized cost ceiling. The Department continues to believe that the FY 2013 President's request of \$23 million for construction provides sufficient funding to meet the objectives of the Project as authorized. Recently enacted final appropriations for FY 2013 will determine final allocations to the project. In FY 2014, the Department is continuing to meet its longer-term obligation to fund operations and maintenance for the Mni Wiconi project's Indian sponsors features through Reclamation's request for \$12 million in new FY 2014 appropriations.

Section 3(b)(5) would transfer existing public or tribal water systems "in trust to the applicable rural water system" upon requests from the Tribes or owner of such system. This language leaves some uncertainty in ownership as it doesn't identify the nature of the "trust". Language in sections 3A(e) and 3B(e) of the current Act identifies that ownership is to be held in trust for the tribe by the United States. Section 3(b) also authorizes appropriations for operation and maintenance to be used for the improvement, repair, and replacement of existing public or tribal water systems prior to and after their transfer into the respective project system. Reclamation had previously determined that the costs of upgrading existing community facilities should be properly allocated to the construction component of the project. Since these existing systems were originally constructed using funds and authorities of other agencies, Reclamation believes any funding for improvements needed to correct deficiencies in existing systems should be discussed among the various responsible agencies before those systems are accepted into the project.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.

ON S. 693

Chairman Schatz and Members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 693, the City of Hermiston, Oregon, Water Recycling and Reuse Project. For reasons I will discuss below, the Department cannot support the bill.

S. 693 would amend the Reclamation Wastewater and Groundwater Study and Facilities Act (Public Law 102-575, 43 U.S.C. 390h et seq.), commonly called Title XVI, to authorize the Secretary of the Interior to participate in the design, planning, and construction of permanent facilities needed to reclaim and reuse water in the City of Hermiston, Oregon. The project is being implemented by the City of Hermiston.

The City of Hermiston (City), located in north central Oregon, is one of the largest communities within Reclamation's Umatilla Project area. The project proposed by the City includes upgrades and construction at their existing wastewater treatment facility and construction of a delivery system that would deliver recycled water to the West Extension Irrigation District. This recycled water would be used by the District to irrigate agricultural lands. By 2031, it is estimated that this proposed project would provide the District with approximately 2,000 to 3,000 acre-feet of drought resistant water supply during the irrigation season. The 2011 total estimated cost for this project was approximately \$25.8 million.

In January 2010, the City of Hermiston submitted their feasibility report to Reclamation for review under the Title XVI program. In April 2010, Reclamation's review team completed the review and made the certification that the proposed project "Meets Requirements" as defined under section 1604 of Public Law 102-575, as amended. In 2011, Reclamation completed the determination of financial capability and communicated the final approval to the City.

The City and Reclamation's Pacific Northwest Region have completed Reclamation specific actions that are necessary for implementation of the proposed project. This includes environmental compliance, issuance of a license to the City granting authorization to construct, own, operate, and maintain their facility on Reclamation

fee title land, and issuance of a permit allowing this water to be discharged into Reclamation's West Main Canal.

S. 693 would authorize the City of Hermiston's project under Title XVI for Federal funding not to exceed 25 percent of the total cost of the project.

While the Department supports efforts to increase local water supplies and increase recycled water use, this project would compete for funds with other needs within the Reclamation program, including other Title XVI projects currently under construction. In general, the Department supports the Title XVI Reclamation and Reuse program. The 2014 budget request includes funding for the Department's WaterSMART Program, of which Title XVI is an important element, and the full 2014 request for WaterSMART is \$35.4 million.

As part of this total, the Department is requesting \$14 million to fund Title XVI projects selected through competitive funding opportunity processes which uses criteria finalized in 2010 to identify activities most closely aligned with Title XVI statutory and program goals. Reclamation plans to invite sponsors of Congressionally authorized Title XVI projects to submit applications for funding under the program and will review and rank proposals against those criteria to identify projects for funding, subject to appropriations in fiscal year 2014.

We recognize that water reuse is an essential tool in stretching the limited water supplies in the West, and I believe the FY 2014 budget request has demonstrated the emphasis placed by this Administration on this Program. However, given that there are 53 already authorized Title XVI projects and numerous competing mission priorities and demands on Reclamation's limited budget, the Department cannot support the authorization of new Title XVI projects or extensions of existing authorized cost ceilings at the current time. Federal budget realities, however, should not detract from the fact that the Hermiston Recycling and Reuse Project would prove valuable in Oregon's efforts to address current and future water resource challenges posed by drought and the competing demand for scarce water resources.

This concludes my written statement. I am pleased to answer any questions at the appropriate time.

ON S. 715

Chairman Schatz and Members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to be here to provide the views of the Department of the Interior (Department) on S. 715, the "Authorized Rural Water Projects Completion Act". My statement today will draw upon the testimony provided by Commissioner Mike Connor in July 2012 on S. 3385, prior legislation discussed in this Committee during the 112th Congress.

Like the sponsors of this legislation, the Department supports the goals of encouraging vibrant rural economies and ensuring safe, reliable sources of drinking water for rural residents. Rural water projects help build strong, secure rural communities and are important to our non-federal sponsors, which is why the President's FY 2014 Budget includes \$40 million for rural water projects.

As a threshold matter, the Obama Administration has supported Reclamation's rural water program over the last four years, allocating \$231 million of funding, in the FY 2010-2013 budgets, to construct, operate, and maintain authorized rural water projects in addition to \$232 million provided for these projects in the Recovery Act. Still, the rural water program must compete with a number of other priorities within the Budget, including aging infrastructure, Indian water rights settlements, environmental compliance and restoration actions, and other priorities intended to address future water and energy related challenges. Notwithstanding the importance of rural water projects, current budget constraints have limited the ability to make Federal investments that match on-the-ground capabilities.

Despite such constraints Reclamation has made progress in promoting certainty, sustainability, and resiliency for those who use and rely on water resources in the West and in supporting the basic drinking water needs of rural communities, as directed by the Congress. S. 715 provides a constant level of mandatory funding to support the construction of authorized rural water projects to deliver water to smaller, isolated communities. However, the Department believes Federal investments in such projects must recognize the current fiscal constraints and the need to make tough choices in prioritizing those investments. The Administration supports the goals embodied by S. 715 of advancing the economic security of Americans living in rural areas, and constructing these important infrastructure projects will not only help provide the economic benefits of a clean, reliable, drinking water system that most Americans take for granted, but will also assist in creating jobs in the short-term through ongoing construction, but the Administration supports discretionary funding for these projects.

Since the 1980s, Congress has authorized Reclamation to undertake the design and construction of specific projects intended to deliver potable water supplies to rural communities located in North Dakota, South Dakota, Montana, New Mexico, Minnesota and Iowa. These projects exist in communities that are experiencing urgent needs for water due to poor quality of the existing supply or the lack of a secure, reliable supply. For example, in rural Montana, some communities have, from time-to-time, been subject to “boil water” orders due to the unsafe conditions of the existing drinking water supplies. In Eastern New Mexico, the existing communities currently rely on the diminishing Ogallala Aquifer and the current drinking water systems are projected to be depleted within 40 years. Reclamation’s Rural Water Program provides a resource to rural communities under those circumstances and the Congress has authorized federal assistance to meet those needs.

The Rural Water Supply Act of 2006 (P.L. 109-451) authorized Reclamation to establish a program to work with rural communities, including tribes, in the 17 Western States to assess rural water supply needs and conduct appraisal and feasibility studies without individual acts of Congress. Pursuant to the Rural Water Supply Act, Reclamation created a rural water program to enable coordinated examination of the various options to address rural communities’ water supply needs through a cost effective, priority-based process.

In addition to authorizing appraisal investigations and feasibility studies, Section 104 of the Rural Water Supply Act required that the Secretary of the Interior, in consultation with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Director of the Indian Health Service, the Secretary of Housing and Urban Development and the Secretary of the Army, to develop a comprehensive assessment of the status of the existing, authorized rural water projects. Section 104 also directs Reclamation to describe its plans for completing the design and construction of the authorized rural water projects.

In response to Section 104, Reclamation issued a draft assessment report titled “Assessment of Reclamation’s Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Water Communities in the Western United States” which is posted on Reclamation’s website ([www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf](http://www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf)). Comments on the draft report were submitted through September 10, 2012. In addition to providing a report of the status of the existing authorized rural water projects, the assessment report describes how Reclamation’s Rural Water Supply Program will be carried out and coordinated with other Federal programs which support the development and management of water supplies in rural communities in the western states and to maximize efficiency of the various programs by leveraging Federal and non-Federal funding to meet the shared goals of the programs.

As described in the assessment report, with the exception of Title III of P.L. 107-331 that authorized the Jicarilla rural water supply system, each of the Acts of Congress authorizing Reclamation’s involvement in the rural water supply projects required that the cost ceilings included in the original authorizing legislation be indexed to adjust for inflation which is estimated to be 4% annually. The result of these indexing requirements is that the overall cost of the authorized rural water projects has risen and continues to rise during the time needed for construction, such that the total estimated funding that would be required to complete these projects is now \$2.6 billion, which is substantially higher than the original authorization amounts, which totaled \$2.0 billion.

Reclamation has recognized the need to make meaningful progress in constructing authorized rural water projects and has budgeted \$40 million in FY2014 toward that effort. At the levels provided in the 2013 budget, and without additional non-Federal funding, progress would be made towards project completion, but some of the currently authorized projects would be completed much later, perhaps not until well after 2063 despite close to \$4.0 billion being invested by that time. It is estimated that as of 2063, an outstanding balance of approximately \$1.1 billion would remain to complete construction of currently authorized projects.

Across the country, state, local, and Tribal governments are taking a greater leadership role in water resources investments, including financing projects the Federal government would have in the past. Constrained Federal budgets do not preclude the ability of non-Federal parties to move forward with important investments in water resources infrastructure and the Department stands ready to support that effort. Even with the additional resources made available through S. 715, we would expect that non-Federal entities will likely need to increase their share of funding to build these projects in the timeframes they have envisioned.

S. 715 establishes a dedicated Reclamation Rural Water Construction Fund in the United States Treasury comprised of funds that would otherwise be deposited into the Reclamation Fund established by the first section of the Act of June 17, 1902

(32 Stat. 388, chapter 1093). This funding source would enable earlier completion of projects. Section 3(b)(3) of S. 3385 provides that the bill's cost would be offset so as to not increase the deficit. The Department supports such language. However, even if an equivalent and acceptable offset is identified, use of those funds must be weighed against other priorities across the Federal government, including deficit reduction.

Section 3 of S. 715 provides that for each fiscal year from 2014 through 2030, \$80,000,000 per year will be deposited into the Fund in addition to interest earned on invested money that is available in the Fund but not utilized for the current withdrawal. Section 3(c) of S. 715 limits expenditures from fiscal year 2014 through 2035 from the Fund to not more than \$80,000,000 in addition to interest accrued in that same fiscal year, with an allowance for the use of funds carried over from prior years.

S. 715 also provides that if a feasibility study has been submitted to the Secretary by September 30, 2012, and those projects are subsequently authorized by Congress, they may be eligible to receive funding through the Reclamation Rural Water Construction Fund. S. 715 directs the Secretary of the Interior to develop programmatic goals enabling the expeditious completion of construction of the existing rural water projects and to establish prioritization criteria for the distribution of funds. Reclamation's draft assessment report would meet these requirements when complete. Reclamation's first goal is to advance the construction of rural water projects that meet the most urgent water supply needs in the shortest amount of time, given our current budget constraints. The second goal is to give priority to rural water projects that address Indian and tribal water supply needs.

Within the context of the above goals, Reclamation recognizes that current and projected funding levels may not be sufficient to expeditiously complete the federal funding portion of every project and that it must prioritize the allocation of available funding. The draft assessment report outlines prioritization criteria to guide Reclamation's decision making to maximize the agency's ability to meet its programmatic goals, to maximize water deliveries to rural communities in as short a period as possible, and to reflect the diverse needs and circumstances facing each individual project. The six criteria identified by Reclamation for rural water construction prioritization are:

- Is there an urgent and compelling need for potable water supplies?
- How close is the Project to being completed and what is the commitment of the project sponsors to making that happen?
- What is the financial need of the communities and what is the relative economic effect of the Project?
- Does the Project fulfill Reclamation's authorized niche for taking a regional and watershed approach to rural water projects?
- Does the project minimize water and energy consumption and encourage the development of renewable energy resources such as wind, solar, hydropower, etc., to meet local needs?
- Does the project serve the needs of tribal communities and tribal members?

The analysis outlined in the draft assessment report underscores that in times of constrained federal budgets, non-federal funding in excess of the minimum contributions originally contemplated will be required to expedite project completion and reduce the effects of indexing over the construction period.

This concludes my written statement. I am pleased to answer questions at the appropriate time.

Senator SCHATZ. Thank you very much, Mr. Quint.

In order to accommodate Chair Baucus' busy schedule, I think what we'll do is move to Senator Baucus for a statement regarding rural water projects.

Thank you, Senator Baucus.

#### **STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA**

Senator BAUCUS. Thank you, Mr. Chairman. I also thank very much other witnesses who are subsequently appearing for letting me proceed.

I'm here on behalf of something that's really important to my State. I think the states of most everybody here with the possible

exception of you, Mr. Chairman, and that's water. In our parts of the country it doesn't rain. Now it rains a little bit in Hawaii, at least some parts of Hawaii. In other parts it does not.

But in the Western states, generally, we don't have a lot of water. West of the 100th meridian it doesn't rain a lot. That's why we have section lines and grids. It's not leaps and bounds like the Eastern part of the country.

There's a development of horses and 6 guns and barb wire and all that driven and caused by the mere simple fact that we don't have a lot of water, and, you know, horses were necessary to go great distances because there's no people, because there's no water. A 6-gun, as developed, is light to carry on a horse. It's required.

Barbed wire, required. There's nothing like the necessity to foster invention. We just don't have a lot of water in the West. We're trying to do what we can based upon that.

This is a support of a bill. It's bipartisan. Senator Hoeven has joined me in it. It's the Authorized Water Projects Completion Act. Again I thank Senator Hoeven to make it bipartisan, also other Senators are a part of this.

As Justice Oliver Wendell Holmes wrote in the early days of the Bureau of Reclamation and I'll quote him. "A river is more than an amenity. It is a treasure. It offers a necessity of life that must be rationed among those who have power over it."

In arid places like Montana we know that water is more than an amenity. We treasure water because we don't have much of it. Like so many of us who grew up in our part of the world we are off the grid. We're off the power grid and we're off the water grid. We live unconnected to the centralized systems that most Americans take for granted.

In places like Box Elder and Brockway, my fellow Montanans have relied too long on old wells that go dry. You know, folks in communities they just have to have wells. There's no water system.

They've spent too many years drinking salty water. It's terrible water, believe me. I've had a good bit of it. It fails Federal drinking water standards.

This fellow named Bruce Sunchild. He's the chairman of the Chippewa Cree Tribe. He testified before this committee last July about all the e-coli in wells on Rocky Boy's Reservation. That's his reservation. That was in 2011.

Today in Eastern Montana, as the Senator from South Dakota certainly knows, in Eastern Montana, Western North Dakota the Bakken oil boom is providing a lot of good jobs. But there's a problem. It's also challenging small towns that barely meet their own water standards.

So this bill, I believe, is an overdue step in using the Reclamation fund for its intended purpose and that is making the West habitable. The current rate of appropriations from the fund it will be twice as expensive as it should be to reconstruct Reclamation projects in states like Montana and the Dakotas and New Mexico. Investing more water up front will result in less spending over time.

It was just made that the \$40 million for the Reclamation's rural water projects in the President's budget last week. I believe it dem-

onstrated once again why Congress needs to act. We can't rely on the Administration.

My bill will speed up construction, create good paying jobs and cost taxpayers less money in the long run. This is about one thing. It's about jobs in rural America. It's about people who need water.

The bill supports good paying jobs in the near term and allows rural communities to support businesses in the long haul. It doesn't add one thin dime to the deficit. I urge you to consider it favorably.

Thank you, Mr. Chairman.

Senator SCHATZ. Thank you, Senator Baucus.

Senator Johnson has questions for the testifiers.

Senator Baucus, thank you very much.

Senator BAUCUS. Thank you.

Senator SCHATZ. I don't think we'll have any questions for you.

Senator BAUCUS. You bet. Thank you.

Senator SCHATZ. Senator Johnson.

Senator JOHNSON. Mr. Quint, thank you for being here.

In the authorization statute for Mni Wiconi Congress found that the U.S. has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental water supply and public health needs of the Pine Bridge Indian Reservation, Rosebud Indian Reservation and Lower Brule Indian Reservation. Incorporating the existing communities systems into the Mni Wiconi Project is central to ensuring these needs are met. My understanding is that BOR will not allow these systems to be incorporated into Mni Wiconi until they are sufficiently upgraded. Yet BOR has resisted using funding for upgrades.

Although you testified that the BOR is interested in working with other agencies I'm not convinced that will happen outside of legislation. What assurances can you provide that these needs will be addressed?

Mr. QUINT. I want to say that the Department and the Bureau of Reclamation takes the tribal trust responsibilities very seriously. As part of taking those seriously we try to work with the tribes as much as possible to meet the needs that they have. It's a complicated system.

Many Federal agencies have been involved in building these systems. Have different levels of responsibilities and funding for these systems. We're committed to work with all those entities to try to resolve these issues.

Senator JOHNSON. Mr. Quint, in last July's report on the status of rural water projects BOR indicated that with overall construction funding levels of \$50 million annually some of the authorized projects will extend well beyond 2063 with substantial outstanding balance remaining. Taking out the operations and maintenance funding, the FY2014 budget request for construction on authorized projects is actually down around \$22 million. How would starting with \$80 million annually from Reclamation funding impact project timelines and overall costs for projects like Lewis and Clark?

Mr. QUINT. Let me find my data here.

The current information that I have that with an \$80 million annual funding most significant progress can be made for all the currently authorized projects. We would expect by the year 2039 that



at a total cost of \$34 billion we could finish the currently authorized rural water projects.

Senator JOHNSON. That is just about a quarter of a century sooner.

Mr. QUINT. That's correct.

Senator JOHNSON. I yield back.

Senator SCHATZ. Thank you, Senator Johnson.

Senator BARRASSO.

Senator BARRASSO. Thank you very much, Mr. Chairman.

Mr. Quint, thanks so much for being here. It's good to see you.

You know, Mr. Chairman, I believe that developing water for our rural areas is vital to economic growth in the West. In my home State of Wyoming I agree completely with Senator Baucus' comments about water in the Rocky Mountain West, jobs and our economy. I believe that Senator Baucus' bill, S. 715, the Authorized Rural Water Projects Completion Act can help achieve that goal.

I do have some concerns regarding some of the language in the bill. So I'd like to get some clarification on the language. I'm more than willing to work with other Senators to address the concerns.

The first, Mr. Quint, I'd ask you to define what a "rural water project" is supposed to mean with regard to this bill?

Mr. QUINT. Our definition of a rural water project is a project that supplies water for agricultural, municipal and industrial uses in a rural community.

Senator BARRASSO. Because as you know in the 2006 Rural Water Supply Act that term—they then defined rural water supply project to not rural water project. I'm just trying to figure how the Bureau of Reclamation is going to define the term rural water project because the term really isn't defined in the bill. That's why I'm just trying to figure out what projects it would actually cover because we know the specific words in the bill have a huge impact on some of these things.

I don't know if we need a little—

Mr. QUINT. I would rather get back to you with more specifics for the record.

Senator BARRASSO. OK. That's fine. Now on page 3 of the bill with regard to expenditures from the rural water fund it says the Secretary may and I emphasize may, expend from the fund not more than the sum of \$80 million.

Section two, page four, it states that the Secretary may use the amounts from the fund to complete construction of rural water projects.

So I look at that language and say, does this language give the Secretary the ability not to spend the money on some of the authorized rural water projects that qualify for funding or is this mandatory spending? I'm trying to just get a handle around that.

Mr. QUINT. I, again, I think I'll have to answer that for the record. I'm not a lawyer. So I don't understand the legal wills, shalls, mayas.

Senator BARRASSO. Yes, because it clearly has an impact. Specifically if this is mandatory spending, but it says it seems like why are we then giving the Secretary some discretion in the mayas. So if we could get clarification.

Mr. QUINT. I appreciate that.

Senator BARRASSO. Thank you.

Also with regard to page 3 under the section entitled, "Limitation." It states that, "no amounts may be deposited in or made available from the fund under those paragraphs if the transfer or availability of the amounts would increase the deficit."

So I heard Senator Baucus say it wouldn't cost one thin dime. So I would ask if you could provide us a list of all the projects. I know you don't have this now—or programs that will be reduced or revenue accounts that will be increased to make sure that this bill actually is deficit neutral.

Mr. QUINT. We'd be glad to provide that. But I can say that probably knowing what specific year those projects are it will be a case by case basis, year by year.

Senator BARRASSO. Yes, cause you take a look at this and, you know, I'm trying to figure out what the differences are and the different ways that the Secretary can then use this to make these transfers deficit neutral and if this should maybe be a formal process to do that.

Another is, I think you're familiar with the GAO report in February 2006 entitled, "Indian Irrigation Projects." It continues in the title, under the quote, "Numerous issues need to be addressed to improve project management and financial sustainability."

I don't know if you're familiar with that project or not. OK.

I just want to point out that the GAO study says that there are 16 different irrigation projects initiated, I think, in the late 1800s, early 1900s by the Department of Interior. They actually were never completed and/or not sustaining themselves. All but one of the projects are now managed by the Bureau of Indian Affairs, but they were previously, you know, through the Department.

My question is we're looking newer projects and funding newer projects in this bill when there are many authorized Bureau of Reclamation projects for tribes that are, you know, more than 100 years old. I went and visited a number of them and had a field discussion and forum in Wyoming in a location. They have severe deferred maintenance backlog, not completed, but yet we're looking at starting new projects.

So I just wondered if you have some thoughts on that.

Mr. QUINT. The only thoughts I have right off the top of my head, not being aware of the report, is that part of the reason we've developed some of our criteria for prioritizing projects is hopes to address those types of issues.

Senator BARRASSO. You know, just finally, Mr. Chairman, as my time is expired. I just want to say that these Indian irrigation projects need to be addressed, I believe, as part of this bill so that these tribes can get the assistance that they need.

So, thank you, Mr. Quint.

Thank you, Mr. Chairman.

Mr. QUINT. Thank you.

Senator SCHATZ. Chairman Wyden.

The CHAIRMAN. Thank you very much, Chairman Schatz.

Senator Heinrich, you were here ahead of me. If I took no more than 3 minutes, could I go because I'm trying to get back to that other committee you and I share? You want to get there too.

Senator HEINRICH. Absolutely. Go right ahead.

The CHAIRMAN. I thank my colleague.

I'm going to be very brief and will submit a couple of questions for the record as well.

Your hearing today, Mr. Chairman, S. 693, the city of Hermiston Water Recycling and Reuse Project, this is extraordinarily important to Hermiston, one of our Eastern Oregon communities. The City is going to bear the lion's share of the cost. If we can put it in place as it's presently constituted, agricultural production will go up.

The local economy will get a boost. It's going to be good for fish, the environment, and habitat. You are giving the right expression on your face this afternoon, Mr. Quint, and I appreciate it.

The other bill is S. 659, the Reclamation State's Emergency Drought Relief Act Authorization. I think we all understand what happened last summer with respect to this devastating drought. The reason that we're going to try to fast-track this legislation, Mr. Quint, is according to the most recent information from the Bureau of Reclamation, the Klamath Basin, which has really been a flash point for this debate, not just in Oregon, but in the country, has experienced the second driest January through March period on record.

So you've got those water users in the basin understandably very worried about the prospect of a very difficult and treacherous season.

Mr. Chairman, thank you. Glad to see you in that chair's position as well.

I'll submit some additional questions for the record.

The CHAIRMAN. Also, thank my colleague from New Mexico for his courtesy to be able to get that in very briefly. I yield.

Senator SCHATZ. Thank you, Chairman.

Senator FRANKEN.

Senator FRANKEN. I would also like to thank the Senator from New Mexico for his courtesy or for his courtesy, again.

I'm balancing two committees, so by the early bird—you know what we're doing.

Senator HEINRICH. Now just get to your questions.

Senator FRANKEN. Just get to it. Is that what you're saying?

[Laughter.]

Senator FRANKEN. Now I might take my sweet time.

Mr. Quint, the Authorized Rural Water Projects Completion Act would spend funds that would otherwise be deposited in the Reclamation fund. The average annual surplus in the Reclamation fund from fiscal year 2005 through fiscal year 2011 was \$960 million a year. At the end of fiscal year 2011 the fund had more than \$9.6 billion in it.

Now compare that to the \$40 million, that's 40 with an m that your budget would spend on rural water projects next year. So there is an existing fund that is intended to fund these projects. It has an astronomical surplus, certainly compared to what is being budgeted. So I don't understand why this is so hard.

Why does not the Administration's budget simply request that we spend the fraction of that surplus that it would take to get these projects done? I have a project in mind, by the way.

Mr. QUINT. I am sure you do.

Generally we support the concept of that. The issue that the Administration has and the Department has is that the mandatory funding requirement from the fund itself takes away the discretionary part of being able to decide what the priorities ought to be in each budget year.

Senator FRANKEN. OK. I don't understand. What is the mandatory funding requirement?

Mr. QUINT. The bill basically would require that that be spent on rural water projects and not, if that wasn't the highest priority in that particular budget year, that money would still be spent for those rural water projects as opposed to that amount being discretionary and put toward other higher priority projects in a given year.

Senator FRANKEN. Let me talk about a project. This is the Lewis and Clark Project. Are you familiar with that?

Mr. QUINT. Yes, I am.

Senator FRANKEN. Secretary Salazar called it a priority project. This is a project that starts in South Dakota, in Southeastern South Dakota. South Dakota basically has all of its water an hour, almost all of its water.

Minnesota has no water. The local governments have and Minnesota has paid in its full share. This year's budget request is \$3.2 million which doesn't really even pay for the inflation on the project. At this rate the thing will never get done.

Minnesota and the local communities have paid their full share in this project. Yet, they don't have any. They aren't getting any water at all.

We have Rock County spent \$1.75 million on system maintenance and upgrades including new wells because the project isn't finished.

Pipes, Lincoln Pipestone spent \$6 million to secure an interim water supply.

Laverne spent \$650,000 on a water reclamation system and a new well.

We've had economic development projects that have not gotten done.

This is a quote from chairman of the project, Red Arndt. "There are no words left but cuss words to describe this travesty. This leaves us completely dead in the water."

We made a commitment to these communities that we match their funding and get them water. After 3 years of extremely low budget requests my constituents are wondering if the Bureau of Reclamation wants to keep its commitment. What am I supposed to tell my constituents? What? Is the Bureau of Reclamation ignoring the funding commitment that the Federal Government made?

Mr. QUINT. My answer to that is absolutely not. The problem is that there's a lot more need than there is supply of funds for the projects. We've come up with a prioritization system to prioritize projects. We've worked with stakeholders to develop that process. We apply that for the amount of funding that's available each year.

Unfortunately every project that's authorized and every project that is in a similar situation can't be funded because of the difficult financial situation.

Senator FRANKEN. Last year the request was for \$70 million. This year it's \$40 million.

The Mni Wiconi Project has received its funding and it's done, I guess. So and they received \$30 million last year. If you subtract what they got from last year you get to \$40 million.

What happened to the money? I mean, \$9.6 billion in the Reclamation fund. Where is that money going?

Mr. QUINT. I'm not an expert on the Reclamation fund. I do know that that money comes in and then it's used to fund a number of other projects, not just rural water projects.

Senator FRANKEN. OK. Thank you and the last thing I'm going to do is go over it now after that stern reproach on my colleague. [Laughter.]

Senator HEINRICH. You did great once you got started.

Senator FRANKEN. Thank you.

Senator SCHATZ. Thank you, Senator Franken.

Senator Heinrich.

Senator HEINRICH. Thank you very much. I'll apologize to my colleague here. I want to congratulate you on chairing the meeting today and for allowing me to sit in on what is not my subcommittee. So, thank you very much.

Mr. Quint, I wanted to ask you a couple of things.

One, thanks for joining us today, and certainly thank you for the Bureau's support of the Fort Sumner Title Conveyance Act and for all the diligent work at the Bureau to finalize what's really a mutually beneficial agreement with the Fort Sumner irrigation district. I'm hopeful that this can possibly serve as a model for other basins that are also home to some of the drought and endangered species challenges that we face in the West.

Can you talk a little bit about what lessons we can learn from this process and how we might implement water forbearance and leasing in other basins to aid in the recovery of endangered species? In particular, one of the things that I've heard a little bit about in recent months is the possibility of using forbearance as an option in the middle Rio Grande Valleys as well and get your thoughts on that?

Mr. QUINT. We do feel like leasing could be an option for other commitments in other basins similar to what's going on here.

Regarding the middle Rio Grande basin my understanding is that there are some leases that are already being used on a year to year basis to procure water for some of the ESA needs. There's also water from Price's Dairy that's being made available to try to meet some of those needs. We're looking and working with MRGDC to extend some other leasing arrangements to try to take care of the issues there.

Senator HEINRICH. Great.

I'd love to get a little bit of an update on the status of that. I appreciate your efforts there.

Mr. QUINT. We'd be glad to do that.

Senator HEINRICH. As you know Senator Baucus' rural water project bill has a particular project in New Mexico that's been in the works for a long time, a very critical project, the Eastern New Mexico Rural Water System. That would build a pipeline to provide drinking water to several rural communities in my State, as well

as Cannon Air Force Base. So far Reclamation has contributed just under \$5 million to that project while the State and local sponsors have spent more than \$26 million getting that off the ground.

The communities in that area are in dire need. It's not unlike the situation that Senator Franken just described in terms of the local community really stepping up and putting their money where their mouth is. The long term situation there is quite dire.

Portales is expected to run out of ground water in about 10 years. That's not a long time in terms of our planning horizon.

Clovis is projected to run dry in 20 years.

So when you look at the current funding rate the project is on track to be completed by about the year 2200. That's about 187 years from now. Congress has committed to partnering with local communities on this project but the slow pace of Federal funding means that these towns may run out of water long before the pipeline is ever completed and construction costs, as you know, go up every single year making it even more challenging.

How can we fulfill our commitment to these communities and make sure that this project is actually completed in our lifetime in particular if we don't pass Senator Baucus' bill?

Mr. QUINT. My answer is going to sound a little generic, but we, every project is unique and with the limited amount of funding we have we have developed a prioritization list to try to get the money, the most bang for the buck for the projects that we have in the list. We have a lot more need than we have resources to put toward them. So we'll continue to work with the locals and we'll work with them on a year by year basis to see where they fit in the priority list and get as much money to all the projects that deserve it that we can.

Senator HEINRICH. I'm going to, sort of, reiterate what Senator Franken touched on because you can prioritize \$40 million all day long, but it's still only \$40 million. It is, you know, forgive the pun, but it's a drop in the bucket in this case. We need to do something to open the tap here.

Mr. QUINT. We would love to work with you to come up with options.

Senator HEINRICH. Thank you.

Senator SCHATZ. Thank you, Senator Heinrich.

Mr. Quint, is it true that there's \$9.6 billion in this fund and that we're pushing out \$40 million a year? Are those numbers correct?

Mr. QUINT. I have no reason to doubt Senator Franken's numbers. But I do not know.

Senator SCHATZ. OK, well for the committee's record.

Mr. QUINT. We can get that information for you.

Senator SCHATZ. Can we have a better understanding of revenue and expenses and the cash balance there. I understand there may be a need to keep some cash reserves to make sure that projects can be pushed out. But that ratio sounds fat especially given that members of this committee has expressed such urgency in their various communities.

So if you could get a more rigorous response to the committee for the record, we'd appreciate that.

Mr. QUINT. We would love to.

Senator SCHATZ. Thank you very much.

If there are no further questions I'd like to thank our witness for his testimony. Testimony and any statements we received related to today's hearing will be made part of the official hearing record.

We will also keep the record open for 2 weeks to receive any additional statements.

With that, this hearing is adjourned.

[Whereupon, at 3:20 p.m., the hearing was adjourned.]





## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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##### RESPONSE OF ROBERT QUINT TO QUESTION FROM SENATOR SCHATZ

*Question 1.* Is Congressional approval of these Acts in the best interest of the beneficiaries?

Answer. The Department's positions on the seven bills before the Subcommittee was specific to each of their Reclamation-specific provisions. In every case, the Department believes its position is in the best interest of the United States and taxpayers as a whole.

##### RESPONSES OF ROBERT QUINT TO QUESTIONS FROM SENATOR WYDEN

*Question 1.* What I heard the administration say at Tuesday's hearing are the same objections from the Bureau that I heard last time—namely that the Title XVI list is chock full and there's no room for any newcomers. How long will it take at current funding levels to get through the current Title XVI backlog?

Answer. The remaining Federal cost share for all authorized Title XVI projects is approximately \$568 million. Projects considered active have an outstanding Federal cost share of approximately \$375 million. The President's budget request for the Title XVI Program was \$20.2 million in FY 2013 and is \$14 million in FY 2014. Assuming that no additional projects are authorized, and assuming annual appropriations within the range of recent requests, the time required to provide the maximum authorized Federal cost share for active projects would be between 18 and 26 years.

*Question 2.* I'm concerned the Bureau's self-imposed policy of opposing any additions to the list ignores a prospective project's individual merit, progress through the process, and expected benefits. How does the Bureau take those qualities into consideration when evaluating projects on the list? Does the Bureau make similar evaluations of prospective projects for which its assistance is requested?

Answer. In 2010, Reclamation developed funding criteria to identify Title XVI projects that most effectively stretch water supplies and contribute to water supply sustainability; address water quality concerns or benefit endangered species; incorporate the use of renewable energy or address energy efficiency; deliver water at a reasonable cost relative to other water supply options; and that meet other important program goals. Reclamation has incorporated these criteria into funding opportunity announcements used each year to invite sponsors of authorized projects to apply for funding. Proposals are evaluated against these criteria to identify projects for funding. We believe this process has been successful at allowing Reclamation to prioritize the projects that most closely match program goals through a process that is transparent to all potential applicants and the public. When sufficient program funding is available, Reclamation also uses those criteria in funding opportunities that invite sponsors of potential new projects to request a small amount of assistance to develop new Title XVI feasibility studies.

##### RESPONSES OF ROBERT QUINT TO QUESTIONS FROM SENATOR JOHNSON

*Question 1.* In response to my question regarding incorporating the existing community systems into the Mni Wiconi Project and the trust responsibility of the United States, you answered that the BOR takes the federal trust responsibility seriously and that BOR will work with the other agencies. I would like additional detail, however, on exactly how you plan to work with the other agencies, specifically

on the community upgrades effort? Would not legislation directing the agencies to come together with timelines for action work best to ensure true coordination and the desired outcomes?

Answer. Reclamation supports the goal of interagency cooperation and efforts to engage other agencies to participate in the Mni Wiconi Project utilizing their existing authorities. An interagency agreement, as proposed by Reclamation during the August 8, 2012 Joint Consultation Meeting with Federal Agencies, has the potential to achieve this objective. The draft agreement discussed at that meeting provides that the agencies will meet quarterly during the first year to evaluate and prioritize the needed system improvements. The agencies then would develop a schedule to fund and implement these improvements. By coordinating this effort, the agencies, utilizing existing authorities, would leverage multiple funding sources, and make more effective use of available federal funds to accomplish the system improvements.

This proposed interagency agreement and effort also meets the intent of the “Memorandum of Understanding Among the Department of Agriculture, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, and the Environmental Protection Agency to Better Coordinate the Federal Government Efforts in Providing Infrastructure and Promoting Sustainable Practices to Support the Provision of Safe Drinking Water and Basic Sanitation in American Indian and Alaska Native Communities” signed in March 2013.

Reclamation agrees that language in this amendment to the Mni Wiconi Project Act would provide further direction to the agencies to work together on this effort.

*Question 2.* Given that the existing community systems are in operation and many are currently in a fine state [of] repair to successfully distribute water, is it not a reasonable approach to transfer these systems into the Project as the Act intended so they can be eligible for OMR funding and regular maintenance per BOR standards while also having other federal agencies assist in the systems’ improvement, repair and replacement as the legislation would provide?

Answer. Reclamation’s assessment of the existing community water systems identified a number of serious deficiencies. The majority of the valves and hydrants are inoperable on the older systems. The inability to perform regular flushing compromises capabilities of disinfectants needed to meet water quality standards. Water reservoirs lacked regular cleaning, inspection, and require coating repairs. Water service needed to be shut off to an entire community to repair pipeline leaks on some systems. Reclamation is also pursuing further investigations to ascertain the condition and potential degradation of the asbestos cement pipe installed in many of these communities. Reclamation had previously determined costs for existing community upgrades to be properly allocated to the construction component of the project. Since these existing systems were originally constructed using funds and authorities of other agencies, Reclamation believes any improvements needed to correct deficiencies in existing systems should be funded by those other agencies before those systems are accepted into the project. These communities are, or will be, connected to and provided water from the Mni Wiconi Project which will significantly reduce their current and future operating expenses in the interim while deficiencies are being addressed. Once existing facilities have been upgraded, community water systems may be transferred into, and operated and maintained as a part of, the entire Mni Wiconi Project.

*Question 3.* The Mni Wiconi Project Act is clear that the existing community systems are to be a part of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water System and the Lower Brule Sioux Water System and the Act authorizes the use of operation and maintenance appropriations for these systems. Given this and the fact that a majority of the population on each of the three reservations is served by these existing systems, wouldn’t you agree that these authorized appropriations need to be used to upgrade these systems prior to and after the transfer in order to fulfill the intentions of the Act and the trust responsibility of the United States which is specifically set forth in the authorizing Act?

Answer. While the Act authorizes existing water systems to be part of the project, it does not authorize the use of O&M funds for the initial costs to remedy water system deficiencies. The initial costs to remedy the deficiencies in the existing water systems should appropriately be allocated to the construction costs of the project. However, the Final Engineering Report for the project and the remaining construction ceiling does not include funds for the needed improvement to integrate some existing community systems into the project. In view of this situation, under the existing ceiling most of these communities will be connected and served water from the Mni Wiconi Project, thereby fulfilling the intent of providing reliable, quality water to the residents of these reservations. The communities that will not be con-

nected within the existing construction ceiling currently have an adequate water supply system. Reclamation estimated the cost to remedy the existing water system deficiencies at \$29 million. Placing the burden of the cost of improving existing water systems on Reclamation's O&M program reduces funding needed for ongoing maintenance for Reclamation's critical water and power infrastructure (including Mni Wiconi) and jeopardizes their reliability and safety. Since authorities to address these community water system deficiencies reside under other agencies, we believe the interagency agreement, prioritization, and funding approach previously described would best address this issue.

*Question 4.* You mentioned an interagency agreement proposed by Reclamation during an August 2012 Joint Consultation meeting. Could you please tell us the progress that has been made in developing such interagency agreement and what specifically Reclamation is doing to further progress?

Answer. A draft agreement was distributed and discussed at that meeting. The agencies in attendance concurred with the intent of the agreement. After that meeting, the Oglala Sioux Tribe requested that further discussions and revisions to the agreement be delayed while the Mni Wiconi Amendment was introduced and acted upon.

#### RESPONSES OF ROBERT QUINT TO QUESTIONS FROM SENATOR BARRASSO

*Question 1.* Can you define what a "rural water project" is supposed to mean with regard to S. 715? The term that is defined in the 2006 Rural Water Supply Act is "rural water supply project" not "rural water project."

- a) How would the Bureau of Reclamation define the term "rural water project" if the term is not defined in this bill?
- b) What projects would this cover?

Answer. Reclamation defines a "rural water project" as a specific project that has been authorized by Congress and meets the criteria in the Rural Water Supply Act (the Act) of 2006, which became P.L. 109-451. Although the term in S. 715, "rural water project" does not exactly match "rural water supply project" as defined in the Act, Reclamation believes the intent to be the same and would use the definition for new projects that meets the Act's criteria. The term "rural water supply project" means a project that is designed to serve a community or group of communities each of which has a population of not more than 50,000 inhabitants, which may include Indian tribes and tribal organizations, dispersed homesites, or rural areas with domestic, industrial, municipal, and residential water. It also includes incidental livestock watering and noncommercial irrigation of vegetation and small gardens of less than 1 acre.

There are currently seven remaining authorized rural water supply projects: Garrison Diversion Unit; Mni Wiconi Rural Water System (RWS); Lewis and Clark RWS; Fort Peck Reservation-Dry Prairie; North Central-Rocky Boys; Jicarilla Apache RWS; and Eastern New Mexico. The bill would also cover any projects recommended by the Secretary and subsequently authorized by Congress on the basis of a feasibility study submitted to the Secretary on or before September 30, 2012. Reclamation received two feasibility studies before that date: the C.C. Cragin Reservoir Water Supply Project (Payson, Arizona) and Dry Redwater Rural Water System (east central Montana) feasibility studies. If authorized by Congress, these projects would be eligible for funding.

*Question 2.* On page 3 of S. 715, with regard to expenditures from the rural water fund, it says the Secretary "may expend from the fund not more than the sum of \$80 million." In section (2) on page 4, it states again that "the Secretary may use the amounts from the fund to complete construction of rural water projects."

- a) Does this language give the Secretary the ability not to spend the money on some of the authorized rural water projects that qualify for funding in this bill?
- b) Is this mandatory spending? If this is mandatory spending, why would it make sense to give the Secretary this discretion?

Answer. a) Yes, the Secretary has the discretion to allocate appropriations among the authorized projects, including the ability to not spend money on some authorized projects. However, the Secretary's discretion is limited by the conditions in Section (3) on pages 5 through 7, which stipulate that appropriations must be used to achieve defined programmatic goals and that the Secretary must develop prioritization criteria to distribute funds from the rural water construction fund.

In compliance with previous direction from received from Congress in 2012, Reclamation developed and applied funding prioritization criteria that meet the requirements of this bill. The criteria were published in Reclamation's 2012 draft assessment report "Assessment of Reclamation's Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Water Communities in the Western United States" ([www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf](http://www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf)).

Answer. b) No, the spending is discretionary. There are two reasons the Administration supports discretionary funding for these projects. First, spending on rural water construction projects competes with other priorities within Reclamation's budget, including aging infrastructure, Indian water rights settlements, environmental compliance and restoration actions, facilitating more sustainable water supplies, and other priorities intended to address future water and energy related challenges. The bill requires offsets for any amount expended from this fund. Therefore, use of those funds must be weighed against other Federal priorities, including deficit reduction.

Second, the Secretary's discretion will enable Reclamation to prioritize the allocation of funds in a way that will expedite the delivery of water and other project benefits as intended, while emphasizing program priorities. As noted above, Reclamation has already developed and applied project prioritization criteria that meet the requirements of the bill. In addition, Reclamation has stated that while it would allocate larger amounts of available funding to higher-ranked projects, all projects would receive some funding unless special circumstances dictated otherwise. An example of a special circumstance would be a project for which previous years' appropriations had not been fully expended. The Secretary's discretion would allow Reclamation to direct more funding toward the completion of authorized projects in the year funds are appropriated.

Section 3 (b) (1) of the S. 715 states that the Secretary of the Treasury shall deposit in the Fund \$80,000,000 of the revenues that would otherwise be deposited for the fiscal year in the Reclamation fund. This section further states that the amounts deposited in the Fund shall be made available in accordance with this section without further appropriations. This language clearly removes some discretion from the administration for other uses of this funding. The use of the term "may" as referenced in your question provides some discretion on whether the funds are fully expended each year and the timeframe under which expenditures occur. If a rural water project did not have plans, specifications, and rights-of-way prepared, they may not have the capability to expend all of the funds in a specific year, whereby the funds would be held until needed.

*Question 3.* With regard to page 3 of S. 715 under the section entitled "Limitation" it states that "no amounts may be deposited in, or made available from, the Fund under those paragraphs if the transfer or availability or the amounts would increase the deficit."

a) Can you provide me a list of all projects or programs that will be reduced or revenue accounts that will be increased to make this bill deficit neutral?

b) What are the different ways that the Secretary can use to make these transfers deficit neutral?

c) Shouldn't there be a formal process to ensure this bill will be deficit neutral?

Answer. The legislation is silent as to which projects or programs should be reduced under its provisions, as well as means to assure that there is no impact on the deficit. As such, if the bill were enacted, implementation of this language would require the Department to go through a process, working with the Department of the Treasury and Office of Management and Budget, to transfer the funds called for under Section 3(e).

## APPENDIX II

### Additional Material Submitted for the Record

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#### STATEMENT OF THE DEPARTMENT OF THE INTERIOR, ON S.J. RES. 12

Thank you for providing the Department of the Interior the opportunity to provide its views on Senate Joint Resolution 12 which proposes to consent to and approve three amendments, Act 107, 2000 Hawai'i Session Laws, Act 12, 2002 Haw. Sess. Laws, and Act 16, 2005 Haw. Sess. Laws., proposed by the legislature of the State of Hawai'i to the Hawaiian Homes Commission Act (HHCA), 1920, as amended. Specifically, S.J. Res. 12 seeks to amend the HHCA to allow the interest rate on loans from the Hawaiian home-loan fund and the Hawaiian home general loan fund to be set by the Hawaiian Homes Commission through an administrative rule, rather than by law. S.J. Res. 12 also changes the qualifications of homestead lessees by authorizing a Hawaiian Homes Commission Act homestead lessee to transfer, or designate a successor to, their leasehold interest to a brother or sister who is at least one-quarter Native Hawaiian.

By way of background, Congress enacted the HHCA in 1921 to provide a homesteading program on approximately 200,000 acres of land, called the "available lands," for native Hawaiians. In section 4 of the Hawai'i Admission Act, 73 Stat. 4, Congress required "the consent of the United States" to certain State of Hawai'i enactments amending the HHCA. In section 204 of the Hawaiian Home Lands Recovery Act (HHLRA) of November 2, 1995, 109 Stat. 361, Congress formalized the role of the Department in securing any required congressional consent and approval to State enactments.

The HHLRA provides that the Department is to review proposed state amendments to the HHCA to determine whether congressional approval is needed to effectuate the United States' consent required under Section 4 of the Hawai'i Admission Act. If the Department deems that congressional approval is not required, it so notifies the State of Hawai'i and Congress. If the Department deems that congressional approval is required, as the Department has for the three proposed amendments that are the subject of S.J. Res. 12, the Department is to submit a draft joint resolution approving the amendments to Congress, together with a recommendation on whether they should be approved. Here, we wish to acknowledge that the introduced bill was a product of close collaboration among the Committee on Energy and Natural Resources, the Department, and the Hawai'i Senate delegation.

In carrying out the Department's statutory trust responsibilities to the beneficiaries of the HHCA, the Department obtained input from participants during a Beneficiary Forum with the Department's Office of Native Hawaiian Relations. The forum was held in May 2008 in Hawai'i to discuss with leaders of the Native Hawaiian beneficiary community the State enactments proposed to amend the HHCA. Due to public request, the Department extended the comment period and conducted an electronic consultation with the Native Hawaiian community.

Based upon the Department's review and the criteria listed in section 4 of the Hawai'i Admission Act, the Department determined that Act 107, 2000 Haw. Sess. Laws, Act 12, 2002 Haw. Sess. Laws, and Act 16, 2005 Haw. Sess. Laws, require congressional consent before such proposed amendments take on the force of law. The Department supports the United States consenting to and approving of Act 107 and remains neutral on the consenting to and approving of Acts 12 and 16.

This concludes the Department's prepared testimony on S.J. Res. 12, and the Department would be happy to answer any questions the Subcommittee may have.

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#### STATEMENT OF LENNIS "RED" ARNDT, CHAIRMAN, LEWIS & CLARK REGIONAL WATER SYSTEM, ON S. 715

Mr. Chairman, Ranking Member and Members of the Committee:

My name is Red Arndt, Chairman of the Lewis & Clark Regional Water System. On behalf of our Board of Directors, I am pleased to submit this statement in strong support for the Authorized Rural Water Projects Completion Act.

Our Executive Director, Troy Larson, testified in support of the bill at last year's hearing. We were disappointed that the bill did not become law, but optimistic that with renewed effort S. 715 will pass the 113th Congress and be signed by the President. This bill was and is perhaps the last, best opportunity for Lewis & Clark and other authorized rural water projects to receive the federal funding that is due and ensure the estimated 300,000 people in the tri-state region can benefit from the Lewis & Clark Regional Water System.

Authorized and signed into law in 2000, the project is according to the Bureau of Reclamation, currently 76 percent complete. Last July we began producing treated water from our treatment plant, which is being delivered to 11 of our 20 members. Lewis & Clark is now an operational system, which is the good news. However, the bad news is the schedule to connect the remaining nine members is entirely dependent upon federal funding, which for the last four years has been gutted to the point where it does not even cover the rate of inflation on the remaining federal cost share (\$2 million in FY11, \$5.5 million in FY12, \$4.5 million proposed for FY13 and \$3.2 million proposed for FY14).

The three states and 20 local members have pre-paid close to \$154 million, representing 100 percent of the non-federal cost share. Many members pre-paid millions a decade before expecting to receive water, showcasing the strong local support and importance of Lewis & Clark to the region. By contrast the remaining federal cost share increased from \$194.3 million in 2010 to \$200.6 million in 2011. That number will increase when the Bureau of Reclamation provides us with the 2012 number sometime in May of this year. This demonstrates how federal funding is not even keeping pace with inflation. We are on a path to infinity. Even if Lewis & Clark receives \$10 million a year, our engineers estimate the project would not be completed until 2050.

This delay is a double-whammy for taxpayers. Not only does the project become more expensive, but it takes longer to realize the economic benefits. Lewis & Clark would create thousands of jobs on the front end through construction and manufacturing, and more importantly many more long-term jobs on the back end through expanded economic development. As has been noted by our tri-state congressional delegation, Lewis & Clark will pay for itself many times over.

We have a number of economic impact examples. A large pork processing plant in Worthington, Minnesota cannot expand because of the lack of water. Ethanol plants have been turned away in northwest Iowa and southwest Minnesota. Proposed dairies have been turned away in southwest Minnesota.

When times get tough you go back to the basics. What is more basic than drinking water? It's the cornerstone of life and economic development. The three states and 20 local members have gone above and beyond by pre-paying their share of the project. To be perfectly frank, there are no words left but cuss words to describe the members' anger and outrage that the federal government is not honoring its commitment. Given the drought, the federal government is leaving us high and dry at a time when we need water the most.

Lewis & Clark greatly appreciates the strong bi-partisan support it has enjoyed through the years from our tri-state congressional delegation. We applaud Chairman Baucus for his leadership on this issue and the Senate Energy & Natural Resources Committee for this hearing. We respectfully urge Congress to pass this bill so Lewis & Clark and the other projects that are languishing on the Bureau of Reclamation's plate can be completed in a timely manner, bringing much needed water to our nation's heartland. Thank you.

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STATEMENT OF ED BROOKSHIER, CITY MANAGER, CITY OF HERMISTON, OR, ON S. 693

Chairman Schatz and Members of the Subcommittee, thank you for holding this hearing and allowing me to testify in support of S. 693 that will authorize the Bureau of Reclamation to participate in the construction of the City of Hermiston Water Recycling project. My name is Ed Brookshier and I am the City Manager for the City of Hermiston, Oregon. I wish to publicly thank Senator Ron Wyden for introducing this important piece of legislation that is crucial to the City's reclamation and reuse of its municipal wastewater. This reclamation effort will provide high quality recycled water for reuse as a source of irrigation supply. The City's recycled water production is estimated to be 3,600 acre-feet annually, of which 1,800 acre-feet will supply irrigation and 1,800 acre-feet will be discharged to the Umatilla River in winter. This new partial source of drought proof irrigation water will pro-

vide an added supply to the Bureau of Reclamation-owned and locally operated West Extension Irrigation District (WEID).

The City has negotiated an easement license with the Bureau of Reclamation for the recycled water pipeline that will deliver the recycled water to the WEID Main Canal. This license allows the City to construct and operate the recycled water pipeline for a period of 25 years with the ability to extend the license based on mutual agreement of the Bureau of Reclamation and the City. The City is also in the process of negotiating the NPDES permit to discharge the recycled water to the irrigation canal. This permit will establish the water quality criteria and operating conditions for the recycled water discharge to the irrigation canal. The Bureau of Reclamation and the City met to finalize this agreement in June 2011 and the final permit was signed in 2012. A comprehensive feasibility study has been completed on the project and the Bureau of Reclamation has verified that it meets the requirements to be eligible for the Bureau's Title XVI Water Recycling Program.

Hermiston, Oregon is a progressive, growth-oriented urban center with a total trade area population of 320,900. Located in a relatively dry section of the State of Oregon, positioned between the Cascade Mountains to the west and the Blue Mountains to the east, Hermiston is placed in a unique geographical area that offers an extended growing season and a variety of agricultural crops and products. The immediate Hermiston area has been able to diversify its economy with food processing, cold storage, warehousing, and distribution facilities.

The benefits of developing a high quality source of recycled water followed by its use as a source of irrigation are numerous and extend to: the West Extension Irrigation District, the City of Hermiston, The Confederated Tribes of the Umatilla Indian Reservation and the region as a whole.

The West Extension Irrigation District benefits from this project by obtaining an additional source of supply, which is both high in quality and drought proof. Since water is delivered to the District, energy required for pumping is also reduced by approximately \$13,000 annually. In addition, the 1,800 acre-feet of irrigation water provided annually will supply water to 600 acres, reducing the demand on the District's surface water supply sources. Finally, this added source of partial irrigation water improves the District's operational flexibility.

The City of Hermiston benefits primarily through meeting its upcoming National Pollutant Discharge Elimination System Permit (NPDES), which is currently being negotiated with the Oregon Department of Environmental Quality (ODEQ). The City has received support for this project at the highest levels of ODEQ and has been promised that the resources will be made available to complete the permitting process in 2013. This permit requires the City to both develop high-quality recycled water and remove its discharge from the Umatilla River continuously from April 1 to October 31 of each year. The West Extension Irrigation District provides the long-term, multi-farm discharge option that allows the City to remove its discharge from the River during this period of each year. If the City is unable to discharge to the District, it will be in continuous violation of current temperature standards and periodic violation of the ammonia standard contained within the City's NPDES Permit. Secondary benefits to the City include a reduction in energy cost from reduced pumping, estimated to be \$42,000 annually, and the certainty that this solution, though expensive, will provide service for decades to come.

The Confederated Tribes of the Umatilla Indian Reservation will also benefit from development of high-quality recycled water throughout the year. These benefits include a significant improvement in the quality of recycled water discharged to the Umatilla River in winter, further protection of sensitive salmonid habitat during summer when the recycled water is used for irrigation in lieu of River discharge, increased environmental monitoring at the recycled water treatment facility and long-term nature of this solution.

The region as a whole also benefits from the treatment that develops high-quality recycled water. This water source is protective of the environment in both summer and winter and provides an added source of irrigation supply to agriculture, which is the backbone of the Hermiston economy. The City is planning on beginning construction of the Recycled Water Plant in early 2013 to take advantage of a very competitive construction-bidding environment. This effort will have an immediate economic impact to our local economy as much needed jobs will be created through an infrastructure project of this size. More importantly, the addition of the new and reliable water source created by this project will have a profound long-term impact to the farming industry in our area, which faces an uncertain future due to dwindling water supplies.

Mister Chairman, while I understand and appreciate the strict budgetary limitations that your Committee and Congress as a whole are faced with, I believe that the Hermiston Recycled Water Facility is a worthwhile federal investment due to

the numerous federal objectives that will be advanced through this project. Combined with the serious regulatory issues the City of Hermiston is faced with and the need for added drought proof sources of recycled water in the Hermiston area for irrigation, it is essential that we complete construction of this project in a timely manner. The City has secured the necessary local matching funds for this project and is prepared to contribute 75 percent of the total project cost. Federal participation in this endeavor is vital to ensure that this becomes a reality.

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NORTH CENTRAL MONTANA REGIONAL WATER AUTHORITY,  
*Havre, MT, April 25, 2013.*

Hon. BRIAN SCHATZ,  
*Chairman, Subcommittee on Water & Power, U.S. Senate, Washington, DC.*

Hon. MIKE LEE,  
*Ranking Member, Subcommittee on Water & Power, U.S. Senate, Washington, DC.*  
 Re: Comments Submitted to U.S. Senate Committee on Energy and Natural Resources; "Authorized Rural Water Projects Completion Act" (S. 715)

On behalf of the North Central Montana Regional Water Authority (NCMRWA), we appreciate the opportunity to submit comments to the Senate Subcommittee on Water and Power regarding Senate Bill 715, the "Authorized Rural Water Projects Completion Act". The NCMRWA appreciates the ongoing efforts of the Montana state delegation, as displayed by this legislation, to work within the halls of Congress to ensure that such basic necessities as adequate water infrastructure is made available to all of the citizens of Montana.

It is with this sentiment in mind that we draw upon the words that Senator Max Baucus used in his official testimony regarding S. 715; Senator Baucus referenced the number of Montanans that must still rely upon outdated and unreliable wells for their domestic water needs. This bipartisan bill will aid in securing the necessary Congressional authority and direction to continue the construction and work being done to bring water to all of those in Montana and the surrounding regions.

As represented in the President's Fiscal Year 2014 budget, there are proposed funds of \$5.4 million that, if enacted, will be allocated to the Montana water project. However, the uncertainty of today's budget environment in D.C. does not lend certainty to this issue moving forward, which makes the passage of S. 715 paramount in order to secure the establishment of a Reclamation Rural Water Construction Fund within the Treasury. Were S. 715 passed, the fund will require a designated appropriation of funds within the account for each fiscal year between 2014 and 2030, to be used solely for the purpose of the completion of rural water projects.

While a reliable water infrastructure system is taken for granted by many Americans, those in Montana know the precious nature of such a luxury that is not yet made widely available to the population. While we appreciate the \$40 million that has been proposed as allocated to the Bureau of Reclamation within the President's FY 2014 budget, we ask that Congress also take action on this issue and provide certainty to all Montanans that a permanent and secure water supply be made available. Through the passage of S. 715, rural communities across the country will be provided not only with the necessary means by which to secure such a basic necessity but also the federal support by which to do so.

We appreciate the opportunity to submit comments on this needed legislation; if you require any additional information or have any further questions regarding S. 715 and its impact on Montana we encourage you to contact Larry Bonderud 406-450-5196.

Sincerely,

LARRY BONDERUD.

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PREPARED STATEMENT OF THE OGLALA SIOUX TRIBE, ROSEBUD SIOUX TRIBE, LOWER  
 BRULE SIOUX TRIBE AND WEST RIVER/LYMAN-JONES, ON S. 684

#### INTRODUCTION

Thank you for the opportunity to submit testimony on this most important legislation, S.684, the Mni Wiconi Project Act Amendments of 2013. This testimony has been developed conjunctively and is offered on behalf of the Oglala Sioux Tribe, West River/Lyman-Jones, Inc., the Rosebud Sioux Tribe and the Lower Brule Sioux Tribe, the four beneficiaries and sponsors of the Mni Wiconi Rural Water Supply



System in southwestern South Dakota (Figure 1)\*. S. 684, Re-authorization of the Mni Wiconi Project, will:

- increase the authorized Project ceiling for construction by \$14.308 million (October 2012 dollars) for completing drinking water distribution projects on the Pine Ridge and Rosebud Indian Reservations,
- extend the completion of construction through 2016,
- transfer existing community water systems to the Project within 5 years of enactment of S. 684 and
- provide for interagency agreements between the Bureau of Reclamation and
  - EPA,
  - Department of Agriculture
  - Department of Health and Human Services and
  - Department of Housing and Urban Development
  - Bureau of Indian Affairs

to assist with completing the tribal rural water systems including the upgrade of existing water systems in reservation communities, and in the case of the Department of Agriculture and Bureau of Indian Affairs, assist in completing the livestock distribution system to reservation rangelands consistent with the original intent of the Project.

In an effort to reach an agreement with the Bureau of Reclamation on the scope of the reauthorization, the Project Sponsors have eliminated the following provisions from S. 3464, which was introduced in 2012 and is now embraced in S.684:

- extension of the service area of the Oglala Sioux Rural Water Supply System (OSRWSS) to include a small area of reservation trust land in Nebraska;
- recover water costs for Rosebud Sioux tribal members on Trust Land in the community of White River
- the Mni Wiconi Project Emergency Plan
- mitigation of fish and wildlife losses
- feasibility studies of wastewater systems

The Bureau of Reclamation continues to oppose the reauthorization despite our good-faith efforts to reach agreement.

Since introduction of S. 3464 in 2012 and the hearing of this Subcommittee on September 19, 2012, additional construction needs have been identified on the Pine Ridge and Rosebud Indian Reservations, but no increase in the reauthorization is requested.

On the Pine Ridge Indian Reservation, for example, the need for a new inter-connecting pipeline between the east and west side of Pine Ridge Village was identified by the Bureau of Reclamation. The facility has an estimated cost of \$620,000. Parts of the supervisory control and data acquisition (SCADA) system for the Reservation may not be covered by the authorized construction ceiling. Rural services in the Wounded Knee and Rainbow Valley areas may exceed the authorized construction ceiling. These costs are in addition to the \$8.6 million in additional funding needed to serve the Allen/Batesland/Martin service area, which is the Pine Ridge part of the \$14.308 million construction reauthorization request brought forward from S. 3464 to S.684.

Offsetting the increases in construction costs, the Director of the Oglala Sioux Rural Water Supply System (OSRWSS), for example, has been identifying real savings in the SCADA system and in the elimination of other unnecessary costs. Combined with favorable bidding results since last fall, it is contemplated that the Directors (and Tribal leadership) of both the OSRWSS and the Rosebud Sioux Rural Water System (RSRWS) can re-prioritize construction segments and complete the drinking water portion of the Mni Wiconi Project within the \$14.308 million reauthorization request. In the event of surplus funds, they will be applied to much needed community system upgrades.

Individually and collectively, the Project Sponsors support S. 684 and seek the support of the Subcommittee.

#### PROJECT HISTORY

The Mni Wiconi Project Act of 1988 (Public Law 100-516) authorizes and directs the Secretary of the Interior to construct the Mni Wiconi Rural Water Project to provide a safe and adequate municipal, rural, and industrial water supply to both Indian and non-Indian residents of southwestern South Dakota. The Act recognizes

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\*Figure has been retained in subcommittee files.

the poverty on the reservations and severely poor water quantity and quality on the reservations and in the West River/Lyman—Jones service area. Significantly, the Act also recognize the United States trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the reservations.

The Mni Wiconi Project has reached an historic milestone following the long struggle beginning in 1988 of the Oglala Sioux Tribe and West River/Lyman-Jones to complete this invaluable drinking water project. The Rosebud Sioux Tribe began work on their rural water system in 1984 and became part of the Mni Wiconi Project with the passage of P.L. 103-434 in 1994. The Lower Brule Sioux Tribe also joined the Project in 1994 and its water system is completed pursuant to an agreement among the Sponsors for early completion which resulted in substantial savings for the Project. S.684 provides the means to fulfill the vision of safe and adequate water supply for Oglala Sioux and the Rosebud Sioux Tribes.

The Project is a testament to the ability of the tribal sponsors and non-Indian neighbors to collaborate to improve the health and welfare of our respective constituencies. When the Project was initiated, relationships between us were strained at best and governed by events many generations before us but still fresh in the minds of our peoples. As the Project reaches its conclusion, we have built mutual respect and a relationship that evolved from the necessity of working together toward a common good. None of this would have been possible without the continuous efforts of the Subcommittee and the South Dakota delegation, and especially the sponsor of S. 684, the Honorable Tim Johnson.

It is important that the Committee understand the background upon which we embarked to build the largest rural water project in the world. In the beginning we were joined by our partners in the project, West River/Lyman-Jones, for the purpose of bringing good quality water from the Missouri River to the Badlands of Western South Dakota. The Missouri River as a water source is important to the Lakota people because the River is contained within the Great Sioux Reservation established by the Treaty of 1868. Our forefathers saw to it that the entire Missouri River was included in the lands reserved to us. The water users in the West River/Lyman-Jones service area live within the boundaries of the Great Sioux Reservation, which includes all of South Dakota west of the left high bank of the Missouri River.

As formulated in the late 1980s, the Project was of great concern to the members of the Oglala Sioux Tribe. They felt the history of water projects on Indian reservations at that time would be played out on the Pine Ridge Indian Reservation: that non-Indian interests would receive water and Project benefits quickly and Indians would be left with delay and necessary Project features unfinished. They looked at the projects authorized on the San Juan River in June 1962, and observed that non-Indians received project benefits immediately, but the Indians still struggle to get their projects completed decades later, even though they were authorized half a century before. They also observed opposition to Indian projects from the Office of Management and Budget. Based on these concerns, the majority of members of the Oglala Sioux Tribe were opposed to the Project in its early years.

The initial concerns were overcome by a better understanding of the provisions of the Mni Wiconi Project Act, a reformulation of the Project in the Final Engineering Report of May 1993 and amendment of the Act to include the Rosebud Sioux Tribe and Lower Brule Sioux Tribe. Significantly and of high importance to the Tribe, the United States acknowledged in the Act a trust responsibility in the Mni Wiconi Project Act to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Pine Ridge Indian Reservation. Also, important to the comfort level of the Oglala Sioux Tribe was the Act's provision that title to the OSRWSS would be held in trust by the United States for the Tribe. This includes the principal components of the Mni Wiconi Project such as the intake on the Missouri River, the regional water treatment plant on the Missouri River and the main transmission pipelines from the Missouri River to West River/Lyman-Jones, the Rosebud Sioux Tribe, the Lower Brule Sioux Tribe and the Oglala Sioux Tribe. Further, pursuant to the Act, the Oglala Sioux Tribe entered into a PL 93-638 (Indian Self-Determination and Education Act) cooperative agreement with the Bureau of Reclamation to plan, design, construct, operate, maintain and replace OSRWSS.

The Mni Wiconi Act Amendments of 1994 (Public Law 103-434, Title 8) added the Rosebud Sioux and the Lower Brule Sioux Rural Water Systems to serve their respective reservations, thereby increasing the number of Project "Sponsors" to four. The amendments also raised the authorized appropriation ceiling for the Project from \$87.5 to \$263.2 million (1993 dollars), subject to cost indexing, and provided that the systems would generally be constructed in accordance with the Project's Final Engineering Report, dated May 1993 for the purposes of providing domestic,

commercial, municipal, rural, industrial, and livestock water. Completion of project construction was expected in 2003.

The overall Project includes a 14.5 million gallon per day regional water treatment plant, 4,500 miles of pipeline, 60 booster pump stations, and 35 water storage reservoirs. The Project will ultimately serve more than 52,000 people, including more than 40,000 on the three Indian reservations. It is a monumental endeavor which is providing myriad benefits to those most in need. It is a project that must be reauthorized to complete the drinking water components on the Pine Ridge and Rosebud Indian Reservations.

#### IMPACT ON QUALITY OF LIFE AND HEALTH

It is respectfully submitted that the Project is unique and that no other project in the Nation has greater human needs. The Project beneficiaries, particularly the three Indian Reservations, have the lowest income levels in the Nation. Poverty in the Indian service areas is consistently deeper than elsewhere. At the beginning of the third millennium one could not find a region in our Nation in which social and economic conditions are more deplorable.

Before the Mni Wiconi Project, health risks to the Indian people from drinking unsafe water were severe. Health effects of water borne diseases were consistently more prevalent than elsewhere in the Nation, due in part to (1) lack of adequate water in the home and (2) poor water quality where water was available. Higher incidences of impetigo, gastroenteritis, shigellosis, scabies and hepatitis-A were well documented on the Indian reservations of the Mni Wiconi Project area.

Poverty is the harbinger of the severe health care crisis facing the Indian people in the Northern Great Plains. The extra costs of health-care during the lifetime of each 24,000 members of the Indian population in the Mni Wiconi Project are estimated at \$2.25 billion (in 2010 dollars). This is not total costs of health care; it is the present value of the extra cost of life time health care relative to the rest of the population off the reservations. Regional data suggests clear relationships between income levels and higher mortality rates for heart disease, cancer and diabetes with correspondingly higher federal health-care costs.

The Mni Wiconi Project is part of the solution. It brings much needed employment, both direct and through economic development projects, which, in turn, engages part of our unemployed and underemployed and brings about measurable improvement in the health of the Lakota Nation, thereby reducing federal health-care costs and, most of all, the tragedy in the families affected. Mni Wiconi builds the dignity of many, not only through improvement of drinking water, but also through increased employment and earnings during planning, construction, operation and maintenance and from commercial enterprises supplied with Project water.

The Project has accomplished much improvement of water quality using a combination of water from the Missouri River and from the Ogallala Aquifer. Homes previously reliant on water laced with unsafe levels of arsenic, uranium and nitrite/nitrates have been placed on a safe and reliable drinking water system, and we expect reductions in mortality.

#### PROJECT FUNDING STATUS

The authorized construction funds will be 100 percent expended at the end of FY 2013. With construction funding at the \$23 million level as proposed in the President's FY 2013 budget, the project will have expended \$470,357,000 within the current authorization. The funds will not be adequate to complete the Project as originally planned.

The reauthorization request of \$14,308,000 would bring total funding to \$484,665,000, an increase of 3.0 percent, and would complete the drinking water portion of the Project. The livestock portion will require programmatic funds from the Bureau of Indian Affairs and Department of Agriculture that are not included in the reauthorization request. The increase compares with unbudgeted overhead costs of \$26,696,000 that the Project will incur through 2013 due to inadequate levels of funding that delayed the project: a factor completely outside the control of the Oglala Sioux and Rosebud Sioux Tribes. These necessary overhead costs are 5.7 percent of the authorized Project costs and nearly double the amount requested in the reauthorization.

The extension of the Project from 2008 to 2013 did not provide for budgeting of Reclamation oversight, administration or other "overhead" costs, which will have diverted \$26.696 million from construction. These costs have been and will continue to be incurred at the expense of construction elements. The slow pace of budgeting and appropriations has extended the Project by seven additional years from 2008 through 2016. The overhead costs in those years have depleted construction funds

by \$26.696 million. S.684 will restore \$14.308 million of the \$26.696 million in diminished construction capability.

The \$23 million remaining in authorized construction funds was included in the President's FY2013 Budget Request. The budgeting will be adequate to complete the allocation of currently authorized funding but will be inadequate to fully complete the drinking water system to persons in need. These are residents that were contemplated in the Final Engineering Report and included in the Project design.

#### CONSTRUCTION CEILING INCREASE

Reauthorization of the funding ceiling by \$14.308 million and a time extension through 2016, the fourth construction sunset date, are needed on the Pine Ridge and Rosebud Indian Reservations to complete the drinking water systems. The West River/Lyman-Jones and Lower Brule Rural Water Systems are complete. Under-budgeting and the slow pace of appropriations underlie the need to reauthorize and extend the Project.

The Project authorization date was extended by PL 110-161 (2008) from 2008 through 2013 without accompanying budgeting for administration and other overhead costs after FY 2007. The extension was necessary because funds had not been appropriated at a rate sufficient to complete funding of Project construction within the authorized construction ceiling. However, since no additional overhead costs were budgeted for with the extension of the date, funds that would have gone to construction were necessarily used to cover annual overhead costs, and Reclamation encouraged the diversion of construction funds allocated for livestock to cover overhead. Overhead costs for the OSRWSS (\$17.990 million) and the Rosebud Sioux Rural Water System (RSRWS) (\$8.706 million), a total of \$26.696 million, severely impacted the funding available for construction.

Because the budgeting of non-contract costs was not included in previous funding authorities after FY 2007, the necessary expenditures for Reclamation oversight and Project administration have reduced the funds to complete construction projects. The overhead costs for years after 2007 have depleted construction funds by \$26.696 million. OSRWSS would have ended the Project with a surplus in its construction budget of \$5,101,000 after finishing its construction projects if it had not been required to expend unbudgeted funds on non-contract costs after FY 2007. The surplus could have been applied to community systems upgrades or the livestock program. S.684 seeks to restore \$14.3 million of the \$26.696 million unbudgeted overhead costs that diminished construction capability.

The Concept Paper for completing the Project (prepared in several versions in 2011 and included for the record as Exhibit A) documented a need for an increase in the authorized construction ceiling of \$29.369 million. Since the Concept Paper was completed the Director of OWRWSS, Mr. Frank Means, took every possible step to achieve cost savings and to limit activities strictly to our first priority of completing the drinking water systems to serve the present and future growing populations on the Reservation. The Rosebud Sioux Tribe did likewise. Lower Brule dropped \$1.74 million in reservoir expansions that would improve their system, which was completed 5 years ago. The cost reductions limit the necessary reauthorization to \$14.308 million as presented in Table 1 and as shown in Figure 2\* on the Pine Ridge Indian Reservation.

In an effort to be reasonable yet steadfast to complete the Project, our request for reauthorization of the Project is focused only on completing the drinking water systems. We propose to use other avenues to accomplish community system upgrades and livestock watering projects:

1. Funds to upgrade existing community systems on the Reservations, a prerequisite, according to Reclamation, for transferring them to the Project as contemplated by the Act and the Final Engineering Report (FER) are not requested. The reauthorization requires Reclamation to submit a plan to Congress for upgrades and transfer within two years of the reauthorization and to implement the transfer within 5 years of enactment of S. 624. Upgrades may continue for 15 years. We disagree, but Reclamation requires transfer before making operation, maintenance and replacement funding available. S. 684 will resolve the issue by making transfers mandatory and communities eligible for operation, maintenance and replacing funding to avoid further deterioration of those systems

2. The high level of investment now required by Reclamation for upgrading the community systems was not contemplated by Reclamation in the 2002 reau-

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\*Figure has been retained in subcommittee files.

thorization (PL 107-367), December 19, 2002. This high level of cost has prevented the transfer of existing

TABLE 1

**COSTS AND FEATURES OF REAUTHORIZATION FOR OSRWSS AND RSWS  
PROJECT FEATURES AND COSTS BEYOND AUTHORIZED CEILING DRINKING  
WATER PURPOSE**

| Cost Feature                                | Drinking Water System Completion and Desired Improvements |                |                     | Drinking Water System Completion Only |
|---|---|----------------|---------------------|---------------------------------------|
|   | Total   | Within Ceiling | Outside Ceiling     |                                       |
| <b>OSRWSS</b>                               |   |                |                     |                                       |
| Contract Costs                              |   |                |                     |                                       |
| Improvements (None Proposed)                | \$0   | \$0            | \$0                 | \$0                                   |
| Allen to Batesland                          | 5,759,000   | 5,299,000      | 459,000             | 459,000                               |
| Histic to Wounded Knee 1, 2, 3 Distribution | 1,885,000   | 0              | 1,885,000           | 1,885,000                             |
| Area 4 Distribution                         | 2,015,000   | 0              | 2,015,000           | 2,015,000                             |
| Area 5, Martin Area, Distribution           | 2,812,000   | 0              | 2,812,000           | 2,812,000                             |
| Subtotal                                    | 12,071,000  | 5,299,000      | 6,771,000           | 6,771,000                             |
| Non-Contract Costs                          |   |                |                     |                                       |
| Construction Oversight                      |   |                | 474,000             | 474,000                               |
| Program Administration                      |   |                | 609,000             | 609,000                               |
| Design                                      |   |                | 372,000             | 372,000                               |
| Surveys and Geotech                         |   |                | 102,000             | 102,000                               |
| Investigations                              |   |                | 66,000              | 66,000                                |
| Reclamation Oversight                       |   |                | 237,000             | 237,000                               |
| Subtotal                                    |   |                | 1,862,000           | 1,862,000                             |
| Subtotal Re-Authorization Need              |   |                | 8,633,000           | 8,633,000                             |
| <b>Rosebud</b>                              |   |                |                     |                                       |
| Contract Costs                              |   |                |                     |                                       |
| Lakeview School                             | 666,000   | 125,000        | 541,000             | 541,000                               |
| Littleberg School                           | 544,000   | 125,000        | 419,000             | 419,000                               |
| Old Rosebud 2                               | 457,000   | 0              | 457,000             | 457,000                               |
| Pamalee Improvements                        | 824,000   | 0              | 824,000             | 824,000                               |
| RWS Improvements                            | 1,650,000   | 0              | 1,650,000           | 1,650,000                             |
| Upper Rosebud                               | 561,000   | 0              | 561,000             | 561,000                               |
| Subtotal                                    | 4,702,000   | 250,000        | 4,452,000           | 4,452,000                             |
| Non-Contract Costs                          |   |                |                     |                                       |
| Construction Oversight                      |   |                | 312,000             | 312,000                               |
| Program Administration                      |   |                | 400,000             | 400,000                               |
| Design                                      |   |                | 244,000             | 244,000                               |
| Surveys and Geotech                         |   |                | 67,000              | 67,000                                |
| Investigations                              |   |                | 44,000              | 44,000                                |
| Reclamation Oversight                       |   |                | 156,000             | 156,000                               |
| Subtotal                                    |   |                | 1,223,000           | 1,223,000                             |
| Subtotal Re-Authorization Need              |   |                | 5,675,000           | 5,675,000                             |
| <b>Total Re-Authorization Need</b>          |   |                | <b>\$14,308,000</b> | <b>\$14,308,000</b>                   |

3. community systems to the Project and enabled their continued deterioration due to absence of funding for operation, maintenance and replacement.

4. The livestock components of the Project on the Pine Ridge and Rosebud Indian Reservations will be developed outside the new authorization through existing programs of the Bureau of Indian Affairs and the Department of Agriculture, and new funding authorization is not requested. The reauthorization requires Reclamation, Agriculture and the Bureau of Indian Affairs to work together on the livestock components.

5. While \$26.969 million in unbudgeted overhead costs from 2007 through 2015 will be spent, an amount that has and will be expended at the expense of construction elements, we are only requesting \$14.308 million to complete the drinking water systems on the Pine Ridge and Rosebud Indian Reservations.

The \$14.308 million is necessary to ensure that all intended beneficiaries will be served. We support the bill on this ground. We also support it for its several other provisions that address the other needs for finishing the Project as intended which are not covered by the \$14.308 million increase.

## COMMUNITY SYSTEM UPGRADES

The Mni Wiconi Act clearly states that the OSRWSS, RSRWS, and Lower Brule Rural Water System (LBRWS) shall include the purchase, improvement and repair of existing water systems, including systems owned by individual tribal members and other residents on the reservations. Sections 3(a)(4), 3A(a)(4), and 3B(a)(4). Further, Sections 3(a)(8), 3A(8), and 3B(a)(8) state that the aforementioned authorized rural water systems shall also include other facilities deemed necessary to meet the water supply, economic, public health and environmental needs of the reservations, including facilities for the tribes, reservation villages, towns and municipalities. Finally, Sections 3(b)(3), 3A(b)(3) and 3B(b)(3) reference the purchase, improvement and repair of existing systems. Congress intended for existing water systems to become a part of the Mni Wiconi Project. In fact, the objectives of the Mni Wiconi Project cannot be met unless the community systems are connected. Without inclusion of such systems, the Project as intended by Congress and the Tribe would not be complete.

Reclamation has determined the costs for community system upgrades. Overall, the costs for community system upgrades total \$26.657 million. Of this, \$13.164 million is for OSRWSS. The total for the RSRWS is \$11.693 million and for the LBRWS is \$1.8 million.

Upgrades of the cost magnitude proposed by Reclamation for these existing systems were not previously contemplated in the FER or by Reclamation in PL 107-367, the 2002 reauthorization of the Mni Wiconi Project Act. Reclamation's current proposal would have the systems in near perfect condition prior to their transfer into the Project rather than accepting these currently working systems and improving them as needed over a period of time—when the lifetime of a feature has come to an end. S. 684 contains language to direct the transfer of existing community systems to OSRWSS, RSRWS or LBSRWSS as other federal agencies' funds and Project operation, maintenance and replacement funds are applied to the upgrade of those systems.

It does not make sense to hold up completing the Project, which must include these existing systems, by requiring the existing systems to be in nearly new condition prior to transfer. Instead, systems should be transferred into the Project and a schedule for conducting priority upgrade work should be established using operation, maintenance and replacement (OMR) Project funding.

An essential new provision in S.684 is the transfer of existing community systems to the OSRWSS, RSRWS, and LBRWS within five years of the enactment of S.684 or three years after the completion of the Secretary's plan for transfer. The purpose of the provision is to ensure the operation, maintenance and replacement of those systems at the earliest practical date. In the absence of a transfer, the maintenance of those systems will languish and deterioration will accelerate.

OSRWSS is working to seek funding from other federal agencies such as HUD, Rural Development, IHS and EPA to assist in upgrading the existing community systems. Two central issues have arisen: (1) the S. 684 language on the community system upgrades is needed to direct the agencies to assist; and (2) Reclamation cannot evade its responsibility. Reclamation is still the responsible federal agency, and it must adhere to its trust responsibility and fund the costs of community systems upgrades (not funded by other federal agencies), a central tenet for ensuring adequate and safe water to the people on the reservation, through the operation, maintenance and replacement program. We support the continuation of operation, maintenance and replacement funding by other agencies that have historically contributed, including HUD and BIA, to reduce funding required from Reclamation.

S. 684 would direct the necessary other agency assistance for the community systems upgrades and direct that the systems be transferred and the operation, maintenance and replacement monies appropriated to Reclamation under the Act be used to improve, repair and replace those systems. These provisions of S.684 are fundamentally important to the completion of the overall Project and for ensuring that the Project can function and serve its beneficiaries as intended.

## LIVESTOCK NOT INCLUDED IN FUNDING REQUEST

Water for livestock on the Pine Ridge and Rosebud Reservations was contemplated in the Final Engineering Report and in the original Project authorization and subsequent reauthorization.

OSRWSS has reduced its livestock distribution system from \$24.024 million to \$11.380 million, and OSRWSS has removed its diminished livestock plan from the funding needed in the amendment of the Mni Wiconi Project Act. Likewise, Rosebud prioritized providing water for direct human consumption and reduced planned livestock water expenditures from \$3.930 to less than \$150,000. The Rosebud Sioux

Tribe has developed a collaborative system with operators and the Natural Resource Conservation Service to construct individual stock taps. Both Tribes intend to work with the Natural Resources Conservation Service and the Bureau of Indian Affairs to construct the livestock distribution systems over a period of 15 years. However, enactment of S. 684 is needed to direct these agencies to undertake the work and fund this important and intended component of the Project. As stated previously, the Bureau of Reclamation urged that funding intended for livestock construction be used to finance the overhead costs after 2007, and the livestock program was sacrificed for necessary non-construction activities that had not been budgeted.

#### ADEQUATE FUNDING FOR OPERATION, MAINTENANCE AND REPLACEMENT FOR EXISTING MNI WICONI PROJECT FACILITIES

In addition to expressing our support for S. 684, we take this opportunity to raise a very important concern of the tribal sponsors: the need for adequate operation, maintenance and replacement (OMR) funding. The Mni Wiconi Act clearly sets forth the trust responsibility of the United States to ensure adequate and safe water supplies are available to meet the economic, environmental, water supply and public health needs of the reservations, and established the framework for Reclamation to fund the construction and OMR of the Project, Section 2(a)(5), Section 10(a) and (b). The Act authorizes, among other things, the construction, operation and maintenance of municipal, rural and industrial water systems which include the existing water systems, Section 3(a), 3A(a) and 3B(a). Reclamation needs to work with the OSRWSS, RSRWS and LBRWS to ensure the remaining features of the Project, including the work related to existing community systems, are completed as planned and the intended beneficiaries are served.

The Act's trust responsibility provision is applied equally to construction and OMR. Anything less than sufficient funding for OMR threatens the significant investment of the United States in construction.

Reclamation needs to work with the OSRWSS to adequately fund OMR of the core and distribution systems. The OSRWSS core facilities serve all Project Sponsors, including the Lower Brule Sioux Tribe, Rosebud Sioux Tribe and West River/Lyman-Jones, as well as the Pine Ridge Indian Reservation. Reclamation advises us that OMR is its first priority. The statutory trust responsibility requires OMR to remain at the forefront of Reclamation's funding obligations. Funding should be adequate to ensure a safe drinking water supply for all Project Sponsors. As we move forward, the Mni Wiconi Project must remain a Reclamation priority. Our OMR funding needs should not be affected by other authorized projects' construction funding needs or by Indian water rights settlements in the years ahead.

Threatening an unnecessary increase in the costs of OMR for the Mni Wiconi Project are the Surplus Water Policies of the Corps of Engineers that would require payment for stored water in Lake Oahe. The Corps of Engineers proposes a cost of \$15-\$20 per acre foot of water derived from Pick Sloan storage. The Oglala Sioux Tribe believes that the Corps of Engineers policy on surplus water is flawed and that the charges potentially require Congress to appropriate more OMR funds for the Mni Wiconi Project for payment of Corps of Engineers charges.

#### CONCLUSION

The Mni Wiconi Project is like no other in terms of human needs. Mni Wiconi means "water is life." It is unique in that the Act which authorized it acknowledges the United States trust responsibility to ensure adequate and safe water supplies for the Pine Ridge, Rosebud, and Lower Brule Indian Reservations. S.684 will enable the United States to carry out this trust responsibility by completing the Project as contemplated. Without S.684, intended project beneficiaries, some who have been waiting for clean water since 1988, will not be served.

We thank the Committee for its consideration of this important legislation and respectfully request that S. 684 moves forward to enactment as soon as possible.

ATTACHMENT.—SUPPLEMENTAL STATEMENT OF THE OGLALA SIOUX TRIBE, ROSEBUD SIOUX TRIBE, LOWER BRULE SIOUX TRIBE AND WEST RIVER/LYMAN-JONES, ON S. 684

The April 16, 2013, testimony of the Bureau of Reclamation (Reclamation) on S. 684 has been reviewed and found extremely troublesome. The Agency is subtly changing its narrative to not only distance itself from funding of remaining construction but, also, future operation, maintenance and replacement (OMR) of facilities authorized as part of the Mni Wiconi Project. The concern begins with the opening statement that S. 684 will “. . . expand the scope and authorization ceiling. . . ,

and have significant impacts on the budgets of both Reclamation and the Bureau of Indian Affairs.”

First, the \$14.308 million in additional construction funds is not an expansion of the scope of the Project. It represents an increase in Project funding by 3.0 percent or a little more than half of the \$26.696 million diverted from construction of the Project to cover Reclamation oversight and Project administrative costs due to inadequate Reclamation budgeting and the extension of the construction period from 2007 through 2013 without additional funding. The \$14.308 million in additional funds is required to complete the original scope of the drinking water project, not to expand it. The Project is only asking to complete the drinking water component as contemplated by the Final Engineering Report approved by the Secretary in 1993. The rest of the Project scope has been diminished (not expanded) to eliminate livestock on the Pine Ridge and Rosebud Indian Reservations. Notably, both the drinking water and livestock components of the West River/Lyman-Jones system were completed without diminishment. By letter dated March 27, 2006, Reclamation recommended to our Senate delegation that the livestock component would serve as a source of funding for the oversight and administrative costs that were not covered when Reclamation prolonged project budgeting from 2007 through 2013.

Second, and consistent with its approach to construction funding, Reclamation is for the first time questioning that the Secretary of Interior would acquire title to existing public or tribal water systems to be held by the United States in trust for the Tribes. This would alter congressional intent and our understanding and is an attempt to withdraw OMR funding for the existing systems that were and are expected to be transferred to the Oglala Sioux Rural Water Supply System, Rosebud Sioux Rural Water System and Lower Brule Rural Water System. Reclamation’s assertion would free Reclamation from OMR responsibility as contemplated by Congress in Public Law 100-516.

Third, Reclamation testified that the Bureau of Indian Affairs has no existing programs or annual appropriations for the construction, repair or upgrading of private residences. Perhaps the insertion of the word “private” helps create a half truth. The word “private” does not appear in S. 684. Section 3(b)(5) is intended for homes eligible for the Bureau of Indian Affairs Housing Improvement Program. We acknowledge the FY 2014 budget of the Bureau of Indian Affairs proposes to eliminate the program, which had a \$12.6 million value in FY 2013. The Bureau of Indian Affairs proposes that HUD funding could be used in the future to replace the former Housing Improvement Program, but we deny that the elimination of the program is an effective step and recognize that use of HUD funds for the same purpose will divert funding from critically needed new housing:

The budget proposes to eliminate \$12.6 million in funding for the Housing Improvement Program. The \$650.0 million Housing and Urban Development Native American Block Grant program serves the same population as HIP. Tribes who receive HUD funding are not precluded from using that funding to provide assistance to HIP applicants.

(Budget Justifications, The United States Department of Interior, Indian Affairs, Fiscal Year 2014, p. IA-0VW-3)

Finally, as Project Sponsors we support and will work effectively with other agencies to assist in funding community system upgrades and completion of the livestock components of the diminished Project. S.684 is needed to facilitate this and is necessary.

However, the testimony of Deputy Quint convinces us that Reclamation will indefinitely hinder the transfer of those existing systems to the Project as it hindered the completion of construction in a timely manner. Reclamation’s purpose is clearly to avoid OMR responsibility currently authorized by Public Law 100-516. The mandatory provision to transfer existing community or tribal systems within 5 years of enactment with title held in trust by the United States on behalf of the Tribes in the Mni Wiconi Project is an essential provision of S. 684. The current authority for OMR funding of existing community systems in Public Law 100-516 (the Mni Wiconi Project Act) would not be expanded, and S.684 would set the time frame for transfers, assure eligibility for OMR funding and prevent the on-going deterioration of facilities in the existing systems caused by Reclamation delays.

In conclusion, S. 684 is necessary to confirm, as originally intended, that the existing systems will be transferred and upgraded. The Mni Wiconi Project Act intends for these systems to be transferred into the Project and eligible for Reclamation OMR funding. The Project is not a complete Project without them. S. 684 sets forth a mechanism to ensure the transfer of the existing systems and includes other federal agencies to assist with system upgrades while holding Reclamation to its responsibilities under the Act for these systems. S.684 would also ensure completion



of Project construction and provide a path for construction of diminished livestock distribution systems on the Pine Ridge and Rosebud Reservations.

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PREPARED STATEMENT OF G. KEITH DENOS, GENERAL MANAGER, PROVO RIVER  
WATER USERS ASSOCIATION, ON S. 211

Chairman Schatz and Members of the Subcommittee, I appreciate the opportunity to submit this testimony for the record in support of S. 211, an amendment to the Provo River Project Transfer Act of 2004 (Transfer Act) authorizing the Secretary of the Interior to convey the recently enclosed Provo Reservoir Canal to the Provo River Water Users Association (Association).

The Association is the local sponsor of the Deer Creek Division of the Bureau of Reclamation's Provo River Project. The Association is a Utah nonprofit corporation organized in 1935 for the purpose of providing a supplemental water supply from the Provo River Project to its shareholders, comprised of metropolitan water districts, cities, a conservation district, and mutual water companies and irrigation companies.

A principal feature of the Provo River Project is the Provo Reservoir Canal (canal), which extends 21 miles from the mouth of Provo Canyon to Salt Lake County. For many years, the canal meandered through pastures and orchards. By the late 1990s, suburban development had surrounded it. Enclosing the canal into a pipe offered significant potential new benefits in terms of public safety, water conservation, water quality, in stream flows and recreation.

In anticipation of the enclosure of the canal (Project), the Association concluded that owning the canal and associated project features would be beneficial for many reasons, including the facilitation of financing for the Project. For this and other reasons consistent with Reclamation's policy regarding title transfer, the transfer of title to the Association of the canal was authorized by Congress with the passage of the Transfer Act in 2004 [Public Law 108-382].

While ownership of the enclosed canal in fact proved crucial to obtaining partial state financing for the Project, a number of factors combined to delay title transfer until after completion of the Project. The Project has proceeded as envisioned, with Reclamation's support, but without Reclamation funding. We recently celebrated the completion of the construction of the Project on April 5th with a ribbon cutting conducted by Senator Orrin Hatch.

As you can imagine, the Association was extremely surprised to learn of Reclamation's decision, both made and communicated to the Association after substantial completion, that the Transfer Act of 2004 did not support title transfer. The Transfer Act calls for transfer of the Provo Reservoir Canal, which is defined in the Act as the canal and associated land and facilities "acquired, constructed, or improved by the United States as part of the Provo River Project, Deer Creek Division . . . as in existence on the date of enactment of this Act" [October 30, 2004]. The Regional Solicitor for the United States Department of Interior has advised Reclamation that completion of the Project prior to title transfer negates Congress' authority and directive to transfer the canal to the Association, as set forth in the Transfer Act, because the newly enclosed pipeline itself was not "in existence" in 2004.

While the Association strongly disagrees with the Solicitor's analysis, we do not consider it profitable to continue debating Congress' intent with respect to transfer of the newly constructed pipeline. We are confident that Congress with the continued support and assistance of the Bureau of Reclamation Commissioner and the Department of the Interior will move very quickly with passage of S. 211 to amend the Transfer Act to resolve the dispute.

We look forward to working with Reclamation and our other partners to complete the transfer of title of the canal and all associated facilities as was contemplated in the Transfer Act.

We are grateful for the leadership and assistance of the Utah Congressional Delegation as well as the Senate Energy Committee in expediting consideration of S. 211.

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PREPARED STATEMENTS OF THE WESTERN STATES WATER COUNCIL

S. 659

I. INTRODUCTION

The Western States Water Council (WSWC) is a non-partisan policy advisory body closely affiliated with of the Western Governors' Association (WGA). The WSWC

represents eighteen western states and WSWC's members are appointed by their respective governors, and represent their states. Our membership includes senior state water managers and administrators.

Our testimony is based on WSWC Position #347 (attached)\*, which strongly supports legislation to reauthorize the Reclamation States Emergency Drought Relief Act (the Act), Pub. L. 102-250, providing the Bureau of Reclamation with much-needed tools to respond to record-breaking drought in the West and to work with states, tribes, and local communities to plan for future droughts.

## II. DROUGHT IN THE WEST

Drought has been, is, and will be an ongoing fact of life in the arid West. Currently, as shown in the below map from the U.S. Drought Monitor, 47.34 percent of the contiguous U.S. is experiencing moderate or worse drought, with abnormally dry to exceptional drought conditions covering much, if not all, of every western state except Washington.<sup>1</sup>

Although recent precipitation has somewhat improved drought conditions in the Midwest,<sup>2</sup> the National Oceanic and Atmospheric Administration reports that drought conditions will likely persist in much of the West through July, with drought developing or intensifying in some parts of Arizona, California, Nevada, New Mexico, Oregon, and Texas.

These conditions follow the record breaking drought of 2012, which was unique in terms of its sudden onset, its persistent dryness and warm temperatures, its magnitude of extremes, and the large area it affected.<sup>3</sup> For example, over 60 percent of the contiguous U.S. experienced moderate to extreme and exceptional drought during 2012, with only 1934 comparable in duration and geographic extent.<sup>4</sup> Last year was also the warmest year on record for the contiguous U.S. over a period of record dating back to 1895.<sup>5</sup>

Not surprisingly, these conditions coupled with the ongoing drought have adversely impacted a broad spectrum of economic, environmental, and other interests across the West and the nation as a whole, the effects of which will reverberate for years to come. Examples include:

- According to some estimates, drought costs the U.S. economy between \$6 billion to \$8 billion per year in direct estimated losses,<sup>6</sup> with the cost of the 2012 drought possibly exceeding \$35 billion.<sup>7</sup>
- Agriculture accounted for much of the economic costs of the 2012 drought,<sup>8</sup> due in part to moderate or worse drought conditions affecting around 70 percent of the nation's crop and livestock production at certain times during the year.<sup>9</sup>
- For only the third time in over 50 years, wildfires across the country burned more than 9 million acres in 2012, causing over \$1 billion in damage.<sup>10</sup> The most damaging fires occurred in the West, including the Whitewater-Baldy Complex Fire which burned 297,845 acres in New Mexico's Gila National Forest.<sup>11</sup>
- The Colorado River Basin experienced one of its driest years in the 1895-2012 period of record, with only 44 percent of its annual average runoff.<sup>12</sup>

\*Document has been retained in subcommittee files.

<sup>1</sup>Kelly Helm Smith., Drought Shifts West on April 23 U.S. Drought Monitor as Heavy Rains Drench the Midwest, NAT'L DROUGHT MITIGATION CTR. NEWS (Apr. 25, 2013), <http://drought.unl.edu/NewsOutreach/NDMCNews.aspx?id=90>.

<sup>2</sup>Id.

<sup>3</sup>Hearing on Drought, Fire and Freeze: The Economics of Disasters for America's Agricultural Producers before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry, 113th Cong., 1 (Feb. 14, 2013) (statement of Roger Pulwarty, Director, National Integrated Drought Information System).

<sup>4</sup>Id. at 3.

<sup>5</sup>NAT'L CLIMATIC DATA CENTER, WILDFIRES - ANNUAL 2012 (Jan. 7, 2013), <http://www.ncdc.noaa.gov/sotc/fire/2012/13>.

<sup>6</sup>W. GOVERNORS ASS'N, CREATING A DROUGHT EARLY WARNING SYSTEM FOR THE 21ST CENTURY, preface (2006), <http://westgov.org/reports/doc—download/394-creating-a-drought-early-warning-system-for-the-21st-century-nidis>.

<sup>7</sup>Pulwarty, *supra* note 3 at 2 (citing Aon Benfield Reinsurance Group's Annual Global Climate and Catastrophe Report).

<sup>8</sup>Id.

<sup>9</sup>U.S. DEPT OF AG., ECONOMIC RESEARCH SERVICE, U.S. DROUGHT 2012: FARM AND FOOD IMPACTS, <http://www.ers.usda.gov/topics/in-the-news/us-drought-2012-farm-and-food-impacts.aspx#.UXhHzbU4udh>

<sup>10</sup>Pulwarty, *supra* note 2 at 1; NAT'L CLIMATIC DATA CENTER, *supra* note 5.

<sup>11</sup>U.S. FOREST SERV., WHITEWATER-BALDY COMPLEX FINAL COMMUNITY UPDATE (June 28, 2012), <http://www.fs.usda.gov/detail/gila/news-events/?cid=STELPRDB5377297>.

<sup>12</sup>Pulwarty, *supra* note 3 at 1, 5.

- Skier visits to the 21 resorts that comprise Colorado Ski Country USA were down 11.5 percent in 2012, compared to 2011.<sup>13</sup>

Notwithstanding the severity of these impacts and the relative frequency of drought in many parts of the West and the nation, in general, we have too often taken a reactive approach to drought, responding on an ad hoc basis to each drought crisis as it develops. However, over the years, many western states and federal agencies have undertaken more proactive approaches to coordinated planning and preparedness intended to avoid or mitigate adverse impacts before they happen.

In particular, the WGA set an aggressive goal in 1996 to change the way our nation prepares for and responds to drought, with subsequent efforts by the WGA and the WSWC to promote a comprehensive, coordinated, and integrated response to drought at all levels of government. We have worked with federal agencies, including the Bureau of Reclamation, to promote, proactive, cooperative drought contingency planning and response.

### III. THE RECLAMATION STATES EMERGENCY DROUGHT RELIEF ACT

The Bureau of Reclamation is the nation's largest wholesale water supplier, providing water to over 31 million people and supplying irrigation water to one out of five western farmers.<sup>14</sup> Notwithstanding Reclamation's vital role as a water supplier in the West, the Act constitutes the whole of its specific drought response and planning authority. Consequently, failure to reauthorize the Act will limit Reclamation's ability to deliver assistance in response to present drought impacts and also limit its ability to provide much needed assistance and technical expertise to states, tribes, and other stakeholders as they plan for future drought impacts.

#### A. Title I—Assistance During Drought

Title I of the Act authorizes Reclamation to undertake construction, management, and conservation measures during drought to minimize or mitigate damage or loss, including authority to act as a "last resort" to aid smaller towns, counties, and tribes that lack the financial capacity to address drought impacts on their own. It also authorizes Reclamation to acquire water to meet diverse requirements under the Endangered Species Act, while at the same time benefiting water users and water delivery contractors at a time when they often face significant financial challenges. Other beneficial drought response actions that Reclamation can undertake under Title I include:

- Participation in water banks established under federal law;
- Facilitation of water acquisitions between willing buyers and willing sellers;
- Acquisition of conserved water for use under temporary contracts;
- Making Reclamation facilities available for storage and conveyance of project and non-project water;
- Making project and non-project water available for non-project uses; and
- Acquisition of water for fish and wildlife purposes.

#### B. Title II—Drought Contingency Planning

Title II of the Act responds to Benjamin Franklin's oft-quoted adage: "By failing to plan, you are preparing to fail." Specifically, it authorizes Reclamation to assist and participate in the preparation of drought contingency plans in all 50 states and U.S. territories to help prevent or mitigate future drought-related losses. Title II also authorizes Reclamation to conduct studies to identify opportunities to conserve, augment, and make more efficient use of water supplies that are available to federal Reclamation projects and Indian water resource developments to better prepare for and respond to drought conditions.

States have primary authority over the allocation and protection of water resources within their borders. However, the WSWC has long supported integrated water resource management and encourages the development of comprehensive water plans with state leadership and federal assistance. This includes a comprehensive and integrated response to drought in which states work with federal agencies, local communities, and other stakeholders to develop proactive drought preparedness and contingency plans.

Title II authorizes Reclamation to engage in exactly this type of planning, which is critical to the social, environmental, and economic well-being of the West. Failure to reauthorize the Act will limit Reclamation's ability to carry out this important work. This would deprive states, tribes, and local communities of much needed tech-

<sup>13</sup> Id.

<sup>14</sup> U.S. BUREAU OF RECLAMATION, BUREAU OF RECLAMATION: FACTS AND INFORMATION, (Jan. 4, 2013), <http://www.usbr.gov/main/about/fact.html>.

nical assistance and expertise at a time when some projections indicate that large portions of the West, particularly the Southwest, will become hotter and drier in coming years. Many of these areas are also experiencing increasing demands on already scarce water supplies due to rapidly growing populations, environmental requirements, energy resource development, and other factors. As a result, the need for effective drought preparedness and contingency plans has never been greater.

#### IV. CONCLUSION

The exceptional drought conditions of 2012 and the ongoing drought that covers much of the West underscores the need to reauthorize the Act. Reauthorization will provide Reclamation with clearer direction and greater flexibility to continue delivering water and much needed financial and technical assistance to states, tribes and local communities suffering from record-breaking drought impacts. Reauthorization will also facilitate more effective state-based and other grassroots drought preparedness and mitigation efforts. Absent reauthorization, Reclamation will lack this critical authority to provide emergency assistance. The WSWC appreciates the opportunity to submit this testimony and urges the Committee to favorably report and the Congress to pass this legislation to reauthorize the Act.

S. 715

#### I. INTRODUCTION

The Western States Water Council (WSWC), representing 18 western states from Alaska to California and Texas to North Dakota, strongly supports the Authorized Rural Water Projects Completion Act (S. 715) as an appropriate and a timely federal investment of modest amounts that will minimize long-term federal expenditures, create more jobs now, and fulfill long-standing promises and trust responsibilities to rural and Tribal communities, some of which date back decades. This testimony is based primarily on WSWC Position #343 (attached), which we sent to former Committee Chairman Jeff Bingaman and Ranking Member Lisa Murkowski in the form of a letter on June 8, 2012 in support of similar legislation (S. 3385). We also testified in support of that bill and wish to reiterate our support for legislative action to establish a dedicated funding source for the completion of federal rural water projects authorized by Congress for construction by the Bureau of Reclamation. Portions of this testimony are also based on WSWC Position #333 (attached), which sets forth the WSWC's long-standing policy in support of using receipts accruing to the Reclamation Fund for authorized projects, including the types of rural water projects that would receive funding under S. 715.

#### II. THE NEED FOR RURAL WATER PROJECTS IN THE WEST

Across the West, rural communities are experiencing water supply shortages due to drought, declining streamflows and groundwater supplies, and inadequate infrastructure, with some communities hauling water over substantial distances to satisfy their potable water needs. Moreover, those water supplies that are available to these communities are often of poor quality and may be impaired by naturally occurring and man-made contaminants, including arsenic and carcinogens, which impacts their ability to comply with increasingly stringent federal water quality and drinking water mandates. At the same time, many rural and Tribal communities in the West are suffering from significant levels of unemployment and simply lack the financial capacity and expertise to finance and construct needed drinking water system improvements.

Since the 1980s, Congress has authorized Reclamation to address this need by designing and constructing projects to deliver potable water supplies to rural communities in the 17 western states. Furthermore, Congress established Reclamation's Rural Water Supply Program when it enacted the Rural Water Supply Act of 2006 (Pub. L. 109-451), authorizing the agency to work with rural communities in the West, including Tribes, to assess potable water supply needs and identify options to address those needs through appraisal investigations and feasibility studies.

In 2009, the WSWC worked closely with Reclamation to identify sources of information on potable water supply needs in non-Indian rural areas of the West. Reclamation released a draft assessment report on July 9, 2012 ("Draft Report") that discusses the results of this effort, finding that the identified need for potable water supply systems in rural areas of the 17 western states ranges from \$5 billion to \$8

billion, not including another estimated \$1.2 billion for specific Indian water supply projects.<sup>1</sup>

The Draft Report notes that there are currently eight active rural water projects located in Montana, New Mexico, North Dakota, and South Dakota, including the Lewis and Clark Rural Water Supply Project, which is located mostly in South Dakota but encompasses parts of the non-Reclamation states of Iowa and Minnesota.<sup>2</sup> The report also notes that of eleven rural water projects that Congress authorized Reclamation to undertake between 1980 and 2007 (when the Rural Water Supply Act was enacted), only four have been completed.<sup>3</sup>

According to Reclamation, the total amount of Federal funding needed to complete the eight authorized projects is now \$2.6 billion, which is substantially higher than the \$2 billion Congress originally authorized. This increase is due in part to inflation and the rising costs of materials and labor. Nevertheless, the Draft Report estimates that these authorized projects could be completed by 2029 at a total Federal cost of around \$3 billion, so long as Federal funding reflects the estimates provided in the original final engineering reports for each of the authorized projects—about \$162 million annually. However, at current funding levels of around \$50 million annually for construction, Reclamation estimates that some projects could be delayed beyond 2063 despite the expenditure of almost \$4 billion in Federal funds by that point. Moreover, an additional \$1.1 billion in Federal expenditures would be needed to complete those projects that are not completed by 2063.<sup>4</sup> Notably, Reclamation is seeking only \$40 million for its rural water program in fiscal year (FY) 2014, a significant reduction from current levels.<sup>5</sup>

### III. FEDERAL FUNDING FOR RURAL WATER PROJECTS UNDER S. 715

S. 715 would provide \$80 million per year for each of fiscal years 2014 through 2030 to complete the construction of rural water projects that have already received Congressional authorization. Other projects may be eligible for funding if: (1) a feasibility study is submitted to the Secretary of the Interior by September 30, 2012; and (2) Congress authorizes the project's construction after S. 715's enactment.

This funding represents a relatively modest Federal investment, compared to the increased costs that will likely occur due to construction delays if funding remains at current levels. We recognize that there are Federal budget constraints. Nevertheless, such constraints do not negate the Federal responsibility to complete authorized rural water projects, particularly those intended to fulfill in part a solemn Federal promise and trust responsibility to compensate States and Tribes for lost resources as a result of the construction of Federal flood control projects.

For example, the Garrison Diversion Unit, an altered version of which would receive funding under S. 715, is intended to compensate the State of North Dakota for the loss of over 300,000 acres of prime farmland that was lost as a result of the construction of the Pick-Sloan Missouri River Basin Program,<sup>6</sup> which also inundated over 550 square miles of Native American land and displaced more than 900 Native American families.<sup>7</sup> Additionally, the North Central/Rocky Boys rural water project will implement the tribe's water rights settlement (as codified in Pub. L. 106-163) with the United States and the State of Montana.

Authorizing the increased use of Reclamation Fund revenues to expedite completion of these projects fulfills a financial and moral obligation that some beneficiaries have waited decades to see honored.

It is also important to note that the Federal expenditures provided under S. 715 would generate significant and actual returns on this investment, including but not limited to:

<sup>1</sup> BUREAU OF RECLAMATION, ASSESSMENT OF RECLAMATION'S RURAL WATER ACTIVITIES AND OTHER FEDERAL PROGRAMS THAT PROVIDE SUPPORT ON POTABLE WATER SUPPLIES TO RURAL COMMUNITIES IN THE WESTERN UNITED STATES, 8 (July 9, 2012), <http://www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf>.

<sup>2</sup> Id. 3 - 4.

<sup>3</sup> Id. at 3.

<sup>4</sup> Id. at 5.

<sup>5</sup> U.S. BUREAU OF RECLAMATION, RECLAMATION'S FISCAL YEAR BUDGET REQUEST IS MORE THAN \$1 BILLION (April 10, 2013), <http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=42744>.

<sup>6</sup> GARRISON DIVERSION CONSERVANCY DISTRICT, HISTORY & FEDERAL LEGISLATION: THE PICK-SLOAN MISSOURI BASIN PROGRAM, [http://www.garrisondiv.org/about\\_us/history\\_federal\\_legislation/](http://www.garrisondiv.org/about_us/history_federal_legislation/).

<sup>7</sup> SENATE REP. NO. 105-146, 4 (1997) (accompanying S. 156 and describing the impacts of the Pick-Sloan Missouri River Basin Program on the Lower Brule Sioux Tribe), <http://www.gpo.gov/fdsys/pkg/CRPT-105srpt146/pdf/CRPT-105srpt146.pdf>.

- National Economic Impacts: According to a 2008 U.S. Conference of Mayors report, one dollar invested in water and sewer infrastructure increases private output, or Gross Domestic Product, in the long-term by \$6.35. Furthermore, for each additional dollar of revenue generated by the water and sewer industry, the increase in revenue that occurs in all industries for that year is \$2.62.<sup>8</sup>
- Economic Impacts and Job Creation in Rural Communities: Investments in rural water projects have a direct impact on the economies of the communities serviced by those projects. For example, a 2006 study by HDR, Inc. on the economic impacts of constructing the Lewis and Clark Rural Water System, which would be eligible to receive funding under S. 715, found that the total economic impact to South Dakota, Iowa, and Minnesota would total \$414.4 million. The report also estimates that the project's construction would directly or indirectly create 7,441 jobs. On a yearly basis, this equals the creation of 532 direct and indirect jobs with average annual salaries ranging from \$25,591 to \$33,462. Approximately 72 percent of the economic impacts would be realized in South Dakota, with 17 percent in Iowa and 11 percent in Minnesota.<sup>9</sup>
- Improved Potential for Economic Development in Rural Areas: The economy of every community, especially rural communities, requires sufficient water supplies of suitable quality. Such supplies depend upon adequate water infrastructure. Improving the water infrastructure of the rural and Tribal communities that would be affected by S. 715 will improve their ability to attract business and develop their economies in ways that are not possible with their current water supplies.
- Improved Quality of Life: The types of water projects that would receive funding under S. 715 would meet the same water quality standards as public systems. These projects would therefore provide a higher quality of safe drinking water and associated health benefits than the water supplies upon which these communities currently rely.
- Reduced Costs: Rural communities would no longer need to expend limited resources drilling and maintained wells, softening and treating water, or hauling water. In addition, these communities would see decreased electrical pumping costs.
- Rural Fire Protection: Rural water systems provide water storage that fire trucks can use to assist with rural fire protection.
- Livestock Use: Rural water projects provide a more reliable and better supply of water for livestock. They also have the potential to decrease the impacts of livestock grazing on riparian areas by allowing for the delivery of water away from these sensitive areas.
- Increased Property Values: In some areas, the resale value of property may increase with a more reliable, safe, clean and adequate water supply.

#### IV. THE USE OF THE RECLAMATION FUND UNDER S. 715

Section 3(a) of S. 715 would provide funding for eligible rural water projects by establishing a Reclamation Rural Water Construction Fund (RRWCF) within the U.S. Treasury that would be financed from revenues that would otherwise be deposited in the Reclamation Fund (the "Fund"). These funds would not be subject to further appropriation, would be in addition to other amounts appropriated for the authorized projects, and should not result in corresponding offsets to other critical Reclamation and Department of the Interior programs. The Secretary of the Interior would also invest the portion of these receipts not needed to meet current expenses, and the resulting interest and proceeds from the sale or redemption of any obligations would become part of the RRWCF. The RRWCF would terminate in September 2035, at which point its unexpended and unobligated balance would transfer back to the Fund.

Congress established the Fund when it enacted the Reclamation Act of 1902 (Pub. L. 57-161) and it was intended to be the principle means of financing Federal western water and power projects in the 17 western states. As stated in Section 1 of

<sup>8</sup>THE U.S. CONFERENCE OF MAYORS: MAYORS WATER COUNCIL, LOCAL GOVERNMENT INVESTMENT IN MUNICIPAL WATER AND SEWER INFRASTRUCTURE: ADDING VALUE TO THE NATIONAL ECONOMY, i (August 2008), available at: <http://www.usmayors.org/urbanwater/documents/LocalGovt%20InvtnMunicipalWaterandSewerInfrastructure.pdf>.

<sup>9</sup>HDR, INC., THE ECONOMIC AND FISCAL IMPACTS OF CONSTRUCTING THE LEWIS AND CLARK RURAL WATER SYSTEM: 2004 STUDY AND 2006 UPDATE, 2 - 3, 63 - 64 (March 2006), available at: <http://www.lcrws.org/pdf/EconomicImpactStudy/EconomicImpactStudy.pdf>. See also BUREAU OF RECLAMATION, supra note 1 at 4 (discussing Federal costs for currently authorized rural water projects).

the Reclamation Act, the Fund provides monies “. . . reserved, set aside, and appropriated as a special fund in the Treasury.”

The Fund’s receipts are derived from water and power sales, project repayments, and receipts from public land sales and leases in the 17 western states, as well as oil and mineral-leasing related royalties. However, the receipts that accrue to the Fund each year are only available for expenditure pursuant to annual appropriations acts. Over the years, rising energy prices and declining Federal expenditures from the Fund for Reclamation purposes have resulted in an increasingly large unobligated balance.

According to the Administration’s FY 2014 budget request, actual and estimated appropriations from the Reclamation Fund are \$872 million for FY 2012 and \$873 million for FY 2013. While these appropriations are projected to decrease to \$852 million for FY 2014, the Fund’s unobligated balance is expected to grow from an actual balance of \$10.8 billion in FY 2012 to an estimated \$13.3 billion by the end of FY 2014.<sup>10</sup> Contrary to Congress’ original intent, instead of supporting western water development, much of the unobligated balance has gone instead to other Federal purposes.

The WSWC has long supported using the Fund for its intended purpose of financing western water development, including the types of rural water projects that would receive funding under S. 715. As stated in WSWC Position #333, Congress and the Administration should:

[F]ully utilize the funds provided through the Reclamation Act and subsequent acts for their intended purpose in the continuing conservation, development and wise use of western resources to meet western water-related needs—recognizing and continuing to defer to the primacy of western water laws in allocating water among uses—and work with the States to meet the challenges of the future.

Unlike typical Congressional authorizations that often do not specify a funding source and may require more Federal monies in addition to current authorizations, the RRWCF would rely on the established stream of receipts and associated interest. Furthermore, as required by Section 3(b)(3) of S. 715, no amounts may be deposited or made available to the RRWCF if the transfer or availability of the amounts would increase the Federal deficit.

It is also important to note that the concept of using receipts accruing to the Fund to establish a separate account to finance specific water projects is not new. Specifically, Congress established the Reclamation Water Settlements Fund (RWSF) under Title X of the Omnibus Public Lands Management Act of 2009 (Pub .L. 111-11). Like the RRWCF, the RWSF consists of receipts transferred from the Fund and provides specified levels of funding starting in FY 2020 for a period of 10 years to help finance specified water infrastructure projects that are part of Congressional-authorized water settlements, especially Indian water rights settlements. The WSWC supports the RWSF for the same reason it supported the establishment of the RRWCF as proposed in S. 715—the use of these funds furthers the construction of much needed water infrastructure in the West in accordance with the Fund’s original intent and purpose.

#### V. FUNDING PRIORITIZATION UNDER S. 715

Before expenditures from the RRWCF could be made, Section 3(c)(3) of S. 715 would require the Secretary of the Interior to develop programmatic goals to ensure that the authorized projects are constructed as expeditiously as possible, and in a manner that reflects the goals and priorities of the projects’ authorizing legislation and the Rural Water Supply Act of 2006. The bill would also require the Secretary to develop funding prioritization criteria that would consider: (1) the “urgent and compelling need” for potable water supplies in affected communities; (2) the status of the current stages of completion of a given project; (3) the financial needs of affected rural and Tribal communities; (4) the potential economic benefits of the expenditures on job creation and general economic development in affected communities; (5) the ability of a given project to address regional and watershed level water supply needs; (6) a project’s ability to minimize water and energy consumption and encourage the development of renewable energy resources, such as wind, solar, and hydropower; (7) the needs of Indian tribes and Tribal members, as well

<sup>10</sup>THE APPENDIX, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2014, 631 (April 2013), <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/int.pdf>.

as other community needs or interests; and (8) such other factors the Secretary deems appropriate.

As the WSWC stated in its June 8, 2012 letter, these programmatic goals and funding priorities “. . . should be developed in a transparent manner in consultation with the affected communities and States—and should consider existing state water plans and priorities.” States and the affected communities have on the ground knowledge of the facts and circumstances associated with the authorized projects that would receive funding under S. 715, and are therefore the most appropriate entities to assist the Secretary in developing these goals and priorities.

#### VI. RECLAMATION AND RURAL WATER PROJECTS

Reclamation is well suited to carry out the development and construction of the authorized rural water projects that would receive funding under S. 715. These specific projects are already authorized and under construction by Reclamation, which has a long history of planning, designing and constructing water infrastructure projects in the West. Most other existing federal water quality and supply programs typically provide loans, grants, or loan guarantees. However, many smaller and poorer rural communities have very limited capacity and little experience to be able to design and construct water projects with financial assistance alone. Consequently, they often need the experience and assistance that Reclamation can provide to help assess needs, design, plan, and construct large water infrastructure projects.

#### VII. CONCLUSION

The expedited construction of authorized rural water projects facilitated by S. 715 will save the Treasury money in the long run, as costs continue to rise, and fulfill Federal obligations in a more timely manner, including Federal tribal trust responsibilities. Postponing spending on this obligation through inadequate or insufficient funding levels only increases Federal costs and perpetuates hardships to rural and Tribal communities in the West. S. 715 would not only fulfill solemn Federal obligations, but also provide needed economic development and job creation.

Importantly, the bill would use receipts that are already accruing to the Reclamation Fund for their intended purpose of financing the construction of western water projects.

The WSWC appreciates the opportunity to submit this testimony, and urges the Committee to approve S. 715 and work with the States towards its effective implementation.

#### ATTACHMENT

WESTERN STATES WATER COUNCIL,  
Murray, UT, June 8, 2012.  
POSITION NO. 343.

Hon. JEFF BINGAMAN,  
*Chairman, Energy and Natural Resources Committee, U.S. Senate, SD-364 Dirksen  
Senate Office Building, Washington, DC.*

Hon. LISA MURKOWSKI,  
*Ranking Member, Energy and Natural Resources Committee, U.S. Senate, SD-312  
Dirksen Senate Office Building, Washington, DC.*

DEAR SENATORS:

On behalf of the Western States Water Council, which represents eighteen states, I am writing to express our support for legislative action to establish a dedicated funding source for the completion of federal rural water projects authorized by the Congress for construction by the Bureau of Reclamation. These projects include components that benefit both Indian and non-Indian rural communities. Many of these communities, particularly smaller communities, are struggling to provide adequate water supplies to meet the needs of their citizens of a quality consistent with federal mandates.

It is essential that these projects be completed in a timely manner for the benefit of these communities in fulfillment of long-standing promises and trust responsibilities, some dating back decades. Another important consideration is the impact on the federal budget and economic growth. Accelerated construction scheduling, made possible by a more timely federal investment of modest amounts, will minimize long-term federal expenditures and create more jobs now.

With respect to programmatic goals and funding priorities established pursuant to directives in any legislation, these should be developed in a transparent manner



in consultation with the affected communities and States—and should consider existing state water plans and priorities.

We appreciate the opportunity to express our interests and look forward to working with you to address this important need.

Sincerely,

PHILLIP C. WARD,  
*Chairman.*

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